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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-6361

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

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To the United States Court of Appeals for the Fifth Circuit

The petitioner, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter "I.B.T."), respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on August 8, 1975.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 517 F.2d 299. It is reproduced in the Appendix hereto (App. p. A-1).[1]

The District Court's "Final Order," dated March 2, 1973, unreported, is reproduced in the Appendix (App. p. A-94).

The District Court's Order of March 19, 1973, also unreported, amending the "Final Order," is reproduced in the Appendix (App. p. A-117).

JURISDICTION

The judgment of the Court of Appeals was entered on August 8, 1975 (Appendix, p. A-1). This petition for certiorari is being filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1

Does a union violate Title VII of the Civil Rights Act of 1964, as amended, solely by continuation of a seniority system

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[1] The Appendix to this Petition is presented in a separate volume, designated herein: "App."

The pertinent District Court's preliminary opinions are reproduced in the Appendix as follows:

December 31, 1971, 335 F.Supp. 246, 4 F.E.P. Cases 77 (App. p. A-45)

January 20, 1972; 4 F.E.P. Cases 875 (App. p. A-50)

October 19, 1972; 6 F.E.P. Cases 690 (App. p. A-56)

December 6, 1972; 6 F.E.P. Cases 703 (App. p. A-79)

created in the 1940's which establishes separate seniority rosters for "road" and "city" motor carrier employees; where, on the uncontradicted record such seniority system:

(a) was provided in lawful collective bargaining agreements negotiated in good faith pursuant to the requirements of the Labor Management Relations Act, and with no intent to discriminate on account of race;

(b) constituted a bona fide seniority system, established in collective bargaining agreements assuring job security for workers who have had no hand in their employer's racial discrimination;

(c) was established in separate bargaining units in conformity with NLRB precedents;

(d) applies equally to whites, blacks and browns in protection of seniority on the basis of entry date into the particular bargaining unit;

(e) does not involve a "line of progression," and does not affect promotion from unskilled entry level to skilled employment;

(f) equally affects white, black and brown "city" employees who wish to transfer to the "road", to the extent that "road" seniority for all is computed from the date of entry into the "road" unit; and thus serves to minimize movement from "city" to "road" of all employees, regardless of race; and

(g) is viewed by the Court of Appeals as improper only because, in that Court's view, its continuation serves to perpetuate the employer's prior unlawful discrimination in hiring.

2

In a pattern or practice suit under § 703 of Title VII of the Civil Rights Act, as amended, where:

(a) The employer acknowledges pre-Act racial discrimination by the employer, and

(b) the Court of Appeals has found post-Act "minority hiring progress [to be] laudable good faith effort to eradicate the effects of past discrimination in the area of hiring and initial assignment," are statistics showing disparate *present incumbency* of whites (91%) v. minorities (9%) "dispositive . . . in a pattern or practice claim" as held by the Court of Appeals; or must an ongoing post-Act pattern or practice of discriminatory hiring and job assignment be shown?

3

Assuming, *arguendo*, the validity of a finding of unlawful pattern or practice of racial discrimination, in fashioning a remedy.

(a) May fictional seniority benefits be awarded to all minority employees, solely on the basis of their race, without regard to whether they were individually affected by the unlawful pattern or practice?

(b) Do different standards for determining individual relief under Title VII apply depending on whether the action is an "individual", "class" or "pattern or practice" suit?

4

Where an industrywide national collective bargaining agreement provides only that "seniority rights shall prevail under this

agreement. . . ." and "the extent to which seniority shall be applied and accrued as well as the methods and procedures of such application shall be clearly set forth in each of the Supplemental agreements," may a Court make seniority determinations in the absence of the autonomous union entities which are parties to the supplemental agreements which specify the various seniority systems?

STATUTORY PROVISIONS

Sections 703, (a) through (j) and 707(a) through (e) of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. §§2000e-2(a) through (j) and 6(a) through (e) are reproduced in the Appendix (App. pp. A-119 to 124).

STATEMENT OF THE CASE

A

The Undisputed Facts

In this "pattern or practice" suit brought pursuant to §703 of Title VII of the Civil Rights Act of 1964, as amended, the Government[2] alleged that TIME-DC (T-DC) a nationwide motor freight carrier had engaged in discriminatory hiring, assignment and promotion practices against blacks and Spanish-surnamed Americans (SSA's); and that I.B.T. also violated the Act solely because it was party to collective bargaining agreements which provided for accumulation of seniority in separate "road" and "city" bargaining units, which tend to prevent transfer by minorities to the road classification and thus perpetuate the effects of the employer's discrimination.

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[2] The suit was filed by the Attorney General under § 707(a) of Title VII of the Civil Rights Act of 1964, as amended; 42 U.S.C.A. §§ 2000e-6.

It is stipulated: "The government does not allege . . . that the bargaining units were established for the purpose of discrimination on the basis of race or national origin."[3]

IBT had nothing to do with the hiring or job assignments. Any discrimination with respect to hiring or job assignment was the sole responsibility of the employer.[4]

The wages, hours and working conditions of most of the T-DC drivers, dockmen, and mechanics, and several groups of its clericals are provided in collective bargaining agreements with eighty-three autonomous local unions affiliated with IBT. There are several hundred separate agreements with the many autonomous local unions covering separate units of T-DC employees.[5]

These separate contracts (each consisting of three parts: the National Master; the appropriate area supplement and the local addenda or riders) each cover separate appropriate bargaining units conventional in this industry; and in a pattern established in a long line of NLRB decisions defining appropriate bargaining units.[6]

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[3] Pre-trial order ¶ 3(17); Ct. of Appeals Appendix p. 110.

[4] There is neither allegation, nor evidence that the unions had anything to do with hiring or job assignment. The sole complaint as to the union is that the collective bargaining agreements "prevent or tend to prevent [minority employees] from transferring . . . to the higher paying more desirable job classifications . . ." Pre-trial Order, ¶ 2(2); Ct. of Appeals Appendix, p. 97.

[5] See Appendix B to Pre-Trial Order. It is stipulated that these contracts are with "certain local unions chartered by the Teamsters . . . " Pre-Trial Order, ¶ 3(6); Ct. of Appeals Appendix, p. 104.

[6] See *In re Georgia Highway Express,* 150 NLRB 1649 at 1651, where the Board held:

> ". . . The Board has long held that local drivers and over-the-road drivers constitute separate appropriate units where they are shown to be clearly defined, homogeneous, and functionally distinct groups with separate interests which can effectively be represented separately for bargaining purposes. . . .
>
> In view of the different duties and functions, separate supervision, and different bases of payment, it is clear that the over-the-road drivers have divergent interests from those of the employees in the unit sought and should not be included in that unit."

These separate bargaining units conventionally and traditionally are: "Road"; "City"; "Clerical" and "Garage."[7]

Seniority rights are established in each of the contracts. Length of service with T-DC, i.e., "company seniority" is provided to be significant in computing rights to vacations, pensions, and other fringe benefits.

But for purposes of bidding for "runs" or posted job openings "unit" seniority is controlling. Thus, each employee will have two significant seniority dates: "company" seniority, significant for vacations, pensions and fringes; and "unit" seniority, controlling job bid rights, layoff and recall.

Each contract provides for posting of vacancies, and guarantees incumbents in that unit the right to bid on the basis of unit seniority.

In the road unit, for example, the more desirable jobs, i.e., those operated over the best roads, under optimum driving conditions, are ordinarily bid and obtained by those who have worked longest in the road unit.[8] Conversely, the less desirable jobs are the lot of those having least unit seniority. And

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[7] In certain of the larger cities, Los Angeles and Chicago, the "City" unit evolved into separate units, each covered by a separate contract applying to city drivers, heavy duty city drivers, and dockmen, respectively.

[8] On infrequent occasions a driver with high road unit seniority may for some personal reason bid a run which is generally considered less desirable by his fellows.

those who have attained sufficient unit seniority to select and hold desirable runs have earned the right by first driving the less desirable runs, and finally, upon acquiring experience and seniority, have advanced to the point where their unit seniority permits selection of better runs.

Seniority, then, is a valuable right, which exists solely by reason of the collective bargaining agreements—and with respect to each individual employee has been earned by long toil. Seniority is greatly valued by the working man. Like his house, or his bank account, it is a valuable asset—it along with a grievance and arbitration procedure constitute job security. Accordingly, workmen jealously guard their seniority rights—and their labor organizations, in the course of collective bargaining often trade off other potential benefits in order to secure enforceable seniority provisions by which employees' jobs can be protected.

T-DC employees freely transfer between units. (App. 109).[9] When they do, they retain their full company seniority for vacation, pension and fringe benefit purposes, but acquire "unit" seniority only from the date of entry into the new unit. Thus a "city" employee transferring to the "road" initially is relegated to a status which will acquire only the least desirable runs—while those who have previously had to await their turn—but who now have acquired experience and unit seniority, exercise their contractual options to bid first.

This seniority system is traditional—established in bargaining units which NLRB has designated—and is totally color-blind. Black, white and brown are treated equally without regard to race or national origin. Each may transfer between

[9] A few individual discriminatees were denied transfer by the employer. We agree that this discrimination, where demonstrated, should be corrected by assignment of unit seniority as of the date of the unlawful discrimination.

units. When he does, he carries his "company" seniority with him, but establishes "unit" seniority from the date of entry into the unit.

The sole claim against IBT is that the lawful, facially neutral seniority provisions in various local or area supplements to the National Master Freight Agreement tend to perpetuate the employer's discrimination. No other union practice is questioned, to the contrary, the Court of Appeals notes the union's efforts to diminish the effects of the employer's past discrimination.[10]

B

The Consent Decree

During the course of the trial in the district court the government and the employer entered a "Decree in Partial Resolution of Suit"[11] (to which IBT was not party) which the government admits,

> ". . . resolved those issues relating to TIME-DC's alleged pattern of hiring discrimination and its resulting obligation to affirmatively recruit and hire qualified Blacks and Spanish-surnamed Americans as new employees, and its alleged obligation to provide monetary compensation for those Blacks and Spanish-surnamed Americans whom the United States alleged were individual and class victims of past discrimination . . .[12]"

In brief summary, this Consent Decree required T-DC to recruit and hire Blacks and SSA's pursuant to specified procedures,

[10] See 517 F.2d at 316 under the heading: "Good Intentions and Recent Improvements." App. . . . .

[11] Appendix, pp. 85-93.

[12] Government's Brief to Court of Appeals, pp. 4-5.

set out qualifications for employment of minority persons, provided priority hiring for certain classes of minorities, and required prospective hiring in the ratio of at least one Black or SSA "for each white hired or transferred in vacancies in each job classification at each of its terminals and facilities until the number of Blacks and Spanish-surnamed Americans in each job classification at each terminal and facility is equal to the percentage of Blacks and Spanish-surnamed Americans in the city . . . where the terminal or facility is located . . ."

The Consent Decree further required T-DC to pay $89,500.00 to the government for distribution to alleged individual and class discriminatees in amounts to be determined by the government's attorneys, not to exceed $1,500.00 to any person; and left jurisdiction in the district court "for such further relief or other orders as may be appropriate."

C

The Seniority Findings and Order

On trial of the remaining issues the trial court found that T-DC[13] had engaged in a pattern or practice of racial discrimination, and that contracts between T-DC and various Teamster locals "while being neutral on their face, do, however, operate to impede the free transfer of minority groups into and within the company."

The trial court rejected the government's claim that all of some 600 incumbent minority employees should be granted

[13] And its many predecessors—TIME-DC is the result of ten mergers of motor carriers. See Opinion of the Court of Appeals at 517 F.2d 299, 304, where details as to the merger history are specified.

seniority relief.[14] Instead, the trial court held that not all minority employees were injured individually by being within the class—and that those who were injured were not all affected to the same degree. The District Court specified, Opinion 10/19/72, App. 56 at 62:

> This Court, in fact, does hold that some were not injured by being a member of the class, and that those who were injured were injured in varying degrees. There are no degrees of discrimination—discrimination is discrimination, and if made on the basis of race is deplorable whatever the degree; however there *are* degrees of injury due to that discrimination—and this is important in determining the equitable relief this Court should afford these individuals.

Accordingly, the relief accorded by the trial court to minority employees was apportioned in accordance with the trial court's view of the degree to which each was damaged by the employer's racial discrimination.[15] Four sub-groups of the

[14] The government originally sought abolition of the seniority system based on length of service in a job classification. The district court denied the request.

The government thereupon complained to the Court of Appeals (See Govt. Brf., p. 39) that:

> "the district court permitted the defendant company and the Teamsters to maintain the discriminatory seniority system for all the black and Spanish-surnamed American members of the affected class . . ." and "The district court erred in so permitting the discriminatory seniority system to continue . . ." for the Government says: ". . . a system of seniority based on length of service in a job classification is itself unlawful under Title VII for all members of the class and must be changed in order to comply with the Act."

The Circuit Court left the system intact, but assigned fictional road unit seniority to all minority employees; without regard to whether they had been adversely affected by racial discrimination. See p. 13, *infra*.

[15] See Trial Court's "Final Order," App. 94 at 100 ff.

minority employees were specified, viz.:[16] (A) thirty persons, all of whom were found to have suffered severe injury because of the class discrimination, were granted the right (denied to white employees) to transfer to road employment with substantional fictional road seniority; (B) a second group, found by the District Court to fall within a gray area, as to whom the evidence was insufficient "to show clear and convincing specific instances of discrimination or harm resulting from discrimination," yet believed by the District Court to be "very possibly the objects of discrimination . . ." and "likely harmed by such discrimination," were given the opportunity to transfer to road jobs with lesser seniority carryover; (C) a third group, as to which "the evidence fails to show that there was any injury or harm as a result of TIME's discriminatory practices," and found "clearly not injured by such discrimination," were denied relief. A fourth group (of over three hundred employees), as to whom the District Court "has no evidence to show that these individuals were either harmed or not harmed individually by the discrimination to the class as a whole," were held entitled to road vacancies[17] with seniority as of the date of future entry into the road unit.

The district court thus tailored the seniority remedy to the degree of injury found to result from the employer's racial discrimination.

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[16] See Trial Court's Opinion of October 19, 1972; App. 56 at 62.

[17] The trial court originally provided their preference over "the general public" (Opinion of October 19, 1972) App. 65; but later, over the union's objection, granted this group preference over incumbent white city employees (Order of March 19, 1973), App. 117.

D

The Court of Appeals' Opinion

The Court of Appeals rejected the trial court's remedy, holding, 517 F.2d 299 at 319, App. 34:

> ". . . we cannot accept the gradations of App. A, App. B, and App. C. For all we know, at this stage some on App. C may have suffered discriminations even more egregious than those whom the Government singled out to be persuasive witnesses to establish pattern and practice. All those on App. A, App. B and App. C are entitled to be given an opportunity to bid on future vacancies in the specified job classifications to which they are allowed to transfer by the District Court's order on the basis of their seniority and, if they qualify for those jobs, to be permitted to exercise their full seniority in such jobs for all purposes, including bidding and layoff."

The Court of Appeals' reference to "at this stage" would appear to indicate the Court believed that the trial had been bifurcated; that only liability had been determined—and that remedy was yet to be tried.

This is not the case. Actually, in a single, lengthy trial after literally years of discovery and depositions systemwide there was full trial on issues of both liability and remedy.

The Court of Appeals further held that seniority determinations could properly be made in the absence of the contracting union;[18] that despite current "laudable good faith effort to eradicate the effects of past discrimination," both TIME and IBT "have engaged in an extensive pattern of

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[18] 517 F.2d at 310ff; App. 16-18.

employment practices unlawful under Title VII and that strong remedial action is warranted."[19]

Accordingly, it jettisoned the remedy formulated by the District Court, held *all* minority employees entitled to preference for road jobs with fictional road seniority from the date each "had the experience necessary to qualify him for a road driving job" without regard to whether they had ever indicated a desire to transfer, or otherwise been shown to have been affected by racial discrimination;[20] held inoperative as applied to beneficiaries of this lawsuit a provision of the pertinent collective bargaining agreement which assured laid-off employees preference in reemployment for a three year period;[21] modified the bidding procedure in a portion of T-DC's operations "in a manner that would speed up the advancement of discriminatees into the [road] position . . .,"[22] vacated certain provisions of the district court's order relating to minorities as to whom there was no proof of injury; and remanded for further proceedings consistent with the Circuit Court's Opinion.

The Circuit Court specifically rejected the *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668, tests of discrimination, holding that the criteria there specified for testing discrimination were applicable only in individual suits—and not applicable to "class" or pattern or practice cases. See 517 F.2d at 315-316, App. 27.[23]

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[19] 517 F.2d at 317; App. 29.

[20] See 517 F.2d 318; App. 34, 35.

[21] The court acknowledged "that the union contract provision granting laid-off L.Ds [road drivers] a three year period in which they may move into vacancies at their home terminal without competition was not adopted for discriminatory purposes." 517 F.2d at 322, App. 40-41.

[22] 517 F.2d at 323, App. 43.

[23] Cf. *Rodriguez v. ETMF*, 505 F.2d 40 at 55-56 (5th Cir. 1974), petition for certiorari pending.

REASONS FOR GRANTING THE WRIT

For more than a decade[24] the EEOC, the lower federal courts, employers, employees, unions and civil rights organizations have been making various applications of the law of employment discrimination as it affects seniority. Yet in 1975, as in 1971, "none of the important [seniority] issues have as yet been authoritatively determined by the Supreme Court, and the present judicial authority does not speak univocally on the major issues." 84 Harv. 1109, 1165 (1971).[25]

Questions as to how seniority is to be allocated in inter-bargaining unit transfer situations; the proper forms of seniority relief, the criteria by and purposes for which relief is to be formulated; allocations of burden of proof; the extent to which incumbents' contractual rights may be limited; what parties are necessary to a determination of seniority rights in a Title VII case; indeed, the very question of what constitutes an unlawful "pattern or practice" cognizable under § 707(a) of the Act are here presented. They are of utmost importance to tens of thousands of motor carrier employees, and the more than five hundred local unions which represent them, as well as hundreds of carrier employers.

In this industry alone, prohibitively expensive litigation involving these or related issues is proliferating in the lower

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[24] Title VII was passed in 1964 and became effective in July, 1965.

[25] Certiorari granted in *Franks v. Bowman* (October 1974 term No. 74-728) will present the narrow issue as to whether individuals found to have been denied initial employment solely because of race are entitled to be made whole by assignment of seniority from the date they would have been employed absent discrimination. And this Court's *McDonnell-Douglas v. Green* has provided criteria by which individual claims of racial discrimination are to be judged, 411 U.S. 792 at 802.

courts;[26] and the unrest on the freight docks associated with pressure to change seniority patterns is exacerbated by the uncertainty engendered by the jungle of conflicting notions published by EEOC and the lower federal courts.

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[26] *Sabala v. Western Gillette, Inc.*, 516 F.2d 1251 (5th Cir. 1975); *McDonald v. Santa Fe Trail Transp. Co.*, 513 F.2d 90 (5th Cir. 1975); *Hairston v. McLean Trucking Co.*, 11 FEP Cases 91 (4th Cir. 1975); *Resendis v. Lee Way Motor Freight, Inc.*, 505 F.2d 69 (5th Cir. 1974); *Herrera v. Yellow Freight System, Inc.*, 505 F.2d 66 (5th Cir. 1974); *Rodriguez v. East Texas Motor Freight*, 505 F.2d 40 (5th Cir. 1974); *Thornton v. East Texas Motor Freight*, 497 F.2d 416 (6th Cir. 1974); *Franks v. Bowman Transp. Co.*, 495 F.2d 398 (5th Cir. 1974); *Bing v. Roadway Express, Inc.*, 485 F.2d 441 (5th Cir. 1973); *Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979 (D.C. Cir. 1973); *Henderson v. Eastern Freightways, Inc.*, 460 F.2d 258 (4th Cir. 1972), *cert. denied*, 410 U.S. 912 (1973); *Witherspoon v. Mercury Freight Lines, Inc.*, 457 F.2d 496 (5th Cir. 1972); *Bing v. Roadway Express Co.*, 444 F.2d 687 (5th Cir. 1971); *Jones v. Lee Way Motor Freight, Inc.*, 431 F.2d 245 (10th Cir. 1970); *cert. denied* 401 U.S. 954 (1971); *Johnson v. Georgia Highway Exp., Inc.*, 417 F.2d 1122 (5th Cir. 1969); *Taylor v. Pacific Intermountain Express Co.*, 394 F.Supp. 72 (N.D. Ill. 1975); *Maldonado v. Yellow Freight System, Inc.*, 10 FEP Cases 1290 (C.D. Cal. 1975); *Salinas v. Roadway Express, Inc.*, 10 FEP Cases 1173 (W.D. Tex. 1975); *United States v. East Texas Motor Freight System, Inc.*, 10 FEP Cases 971 (N.D. Tex. 1975); *Jones v. Pacific Intermountain Express*, 10 FEP Cases 913 (N.D. Cal. 1975); *Sagers v. Yellow Freight System, Inc.*, 388 F.Supp. 528 (N.D. Ga. 1974); *E.E.O.C. v. Braswell Motor Freight Lines*, 8 FEP Cases 754 (N.D. Tex. 1974); *E.E.O.C. v. McLean Trucking Co.*, 7 FEP Cases 299 (W.D. Tenn. 1974); *United States v. Lee Way Motor Freight, Inc.*, 7 FEP Cases 710 (W.D. Okla. 1973); *United States v. Pilot Freight Carriers, Inc.*, 6 FEP Cases 280 (M.D. N.C. 1973); *United States v. Navajo Freight Lines, Inc.*, 6 FEP Cases 274 (C.D. Cal. 1973); *Hayes v. East Texas Motor Freight, Inc.*, 6 FEP Cases 1000 (W.D. Tenn. 1972); *Allen v. Terminal Transport Co., Inc.*, 5 FEP Cases 673 (N.D. Ga. 1972); *United States v. Central Motor Lines*, 338 F.Supp. 532 (W.D. N.C. 1971); *Black v. Central Motor Lines, Inc.*, 1 FEP Cases 586 (W.D. N.C. 1968). (This list is only a fraction; scores of discrimination suits against freight carriers and unions in the transportation industry are pending in the District Courts, and are, as yet unreported.)

Some assert departmental or "bargaining unit" seniority to be suspect,[27] if not unlawful.[28] Others require, as in the instant case, class assignment of fictional unit seniority solely on the basis of race.[29] Others focus upon the individuals claiming discrimination, and applying criteria like those defined in this Court's *McDonnell Douglas v. Green*, 411 U.S. 792 (1973), assign such seniority as the proof shows the individuals would have achieved, absent racial discrimination.

Seniority awards in Title VII Civil Rights employment cases vary according to Circuit,[30] or District;[31] or according to whether

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[27] *Quarles v. Phillip Morris, Inc.*, 279 F.Supp. 505 at 518; *U.S. v. Jacksonville Terminal, et al.*, 451 F.2d 418 (1971); cert. den. 406 U.S. 906.

[28] See Government brief to Court of Appeals in this case at p. 39; note 14, p. 11, *supra.*

[29] *Rodriguez v. East Texas Motor Freight*, 505 F.2d 40 (5th Cir. 1974); *United States v. Pilot Freight Carriers, Inc.*, 6 FEP Cases 280 (M.D.N.C. 1973); *United States v. Navajo Freight Lines, Inc.*, 6 FEP Cases 274 (C.D. Cal. 1973).

[30] *Thornton v. East Texas Motor Freight*, 497 F.2d 416 (6th Cir. 1974) (seniority based on date six months after class member applied for job, or filed EEOC charge protesting denial of job, and was qualified for job); *Bing v. Roadway Express, Inc.*, 485 F.2d 441, 451 (5th Cir. 1973) (seniority based on date class member was qualified and job vacancy existed—no application or EEOC charge required); *Rodriguez v. East Texas Motor Freight*, 505 F.2d 40 (5th Cir. 1974) (seniority based solely on qualification).

[31] *United States v. Lee Way Motor Freight, Inc.*, CCH Employment Practices Guide, ¶ 5285 (W.D. Okla. 1974) (vacancy, qualification and interest in job required); *United States v. T.I.M.E.-DC*, 6 F.E.P. Cases 690 (N.D. Tex. 1972) (application, qualification and vacancy required); *United States v. Navajo Freight Lines, Inc.*, 6 F.E.P. Cases 274 (C.D. Calif. 1973) (full carryover seniority awarded with no proof that class member would have had job but for discrimination); *United States v. Central Motor Lines*, 338 F.Supp. 532 (W.D.N.C. 1971) (full seniority, no individual discrimination proof required); *Diaz v. Pan American World Airways, Inc.*, 346 F.Supp. 1301 (S.D. Fla. 1972) (unit seniority to begin only upon actual entry into unit).

the action is "pattern or practice";[32] "class"[33] or "individual" action.[34]

This uncertainty[35] in the application of an important federal law applicable to millions of workers throughout the nation should be allayed by decision here.

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[32] *United States v. International Bhd. of Teamsters*, Civil No. 73-2214 (5th Cir. 1975) (individualized proof of discrimination not required or permitted until hearing on remedy, and seniority will then be based solely on qualification date). Compare *Leeway*, D.C. Okla., note 31, *supra;* and *Rodriguez v. East Texas Motor Freight et al.*, 505 F.2d 40 at 55 (5th Cir. 1974).

[33] *Bing v. Roadway Express, Inc.*, 485 F.2d 441 (5th Cir. 1973) (individualized proof of discrimination determined at liability trial and seniority based on qualification and vacancy). *Thornton v. East Texas Motor Freight*, 497 F.2d 416 (6th Cir. 1974) (individualized proof of discrimination determined at liability stage and seniority based on 6 months after application or EEOC complaint and qualification).

[34] *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 36 L.Ed.2d 668, 677 (discrimination proof requires showing of racial minority, vacancy, application and qualification).

[35] The Court of Appeals in this very case noted its uncertainty as to one aspect of seniority remedy when it observed, 517 F.2d 299 at 317; App. p. 31.

> But in any event, we would caution all parties that the citing of *Franks* is merely the repetition of the current state of the law in the Fifth Circuit. Certiorari has recently been granted by the Supreme Court on *Franks* and of course all wait with baited breath for the outcome produced by the great people east of the Potomac River. The flexibility we have given the District Court on remand is elastic enough to accommodate whatever wisdom will come from the Highest Court.

ARGUMENT

"More than any other provision of the collective bargaining agreement, including union security provisions under existing law, seniority affects the economic security of the individual employee covered by its terms."[36] And this Court in *Humphrey v. Moore* recognized that: "Seniority has become of overriding importance, and one of its major functions is to determine who gets or who keeps an available job" 375 U.S. 335 at 346, 347.

The problem presented by this case, and the hundreds like it, is to find an appropriate balance between seniority rights provided in collective bargaining contracts and the statutory rights of minority workers to be free of racial discrimination.

1

Petitioners see that balance in maintaining the present, admittedly lawful, separate unit seniority system, assigning "unit" seniority to all regardless of race or color as of the date of entry into the unit.

Within this lawful seniority framework, individuals who have been discriminatorily denied entry or transfer into the unit should be assigned unit seniority as of the date they would have entered the unit absent employer discrimination. Petitioners' insistence upon this assignment of "rightful place" seniority application has met with varying results in the lower federal courts.[37]

Two Circuit Courts have written on the question. The Sixth Circuit in *Thornton v. ETMF and Teamsters Local 667*, 497 F.2d 416 (1974), provided carryover seniority, city to road, to those minority transferees who had demonstrated that they were

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[36] Aaron, Reflections on the Legal Nature and Enforceability of Seniority Rights, 75 Harv. L.R. 1532, 1535 (1962).

[37] See notes 26-31, *supra*, pp. 16-18.

affected by the employer's discrimination and had given prior indication of desire to transfer city to road. The Fifth Circuit in *Bing v. Roadway and Teamsters*, 485 F.2d 441, at 450 properly observed "how much seniority the transferee deserves should be determined by the date he would have transferred but for his employer's discrimination," but contrary to *Thornton*, held that prior indication of desire to transfer was unnecessary, and ruled that upon a showing of proof of *present* wish for transfer, seniority carryover from city to road should be measured from the date that the putative transferee possessed road qualifications.

But now the Fifth Circuit is departing from its own *Bing* ruling. See *Rodriguez v. East Texas Motor Freight*, 505 F.2d 40 at 63ff (1974), pending on certiorari, where after giving lip-service to the *Bing* rule, the Court specifically rejected the Sixth Circuit's *Thornton* rationale, as well as the trial court's *Rodriguez* findings, and held that all minority employees are to be given carryover seniority based not upon any showing of when the individual would have transferred absent discrimination, but upon "whether he desires to transfer now," 505 F.2d at 64.

In the instant case the Fifth Circuit moves even farther from the proper application of the "rightful place" rule. For the trial court's findings as to when individuals were discriminated against are jettisoned, the Court of Appeals refuses to focus on individual seniority rights and holds, 517 F.2d 299 at 319; App. 34:

> All those on App. A, App. B and App. C are entitled to be given an opportunity to bid on future vacancies in the specified job classifications to which they are allowed to transfer by the District Court's order on the basis of their seniority and, if they qualify for those jobs, to be permitted to exercise their full seniority in such jobs for all purposes, including bidding and layoff.

This refusal to focus on individual situations, and the wholesale grant of seniority carryover to all minority employees,

whether or not they were affected by racial discrimination is impermissible reverse discrimination. As Senators Clark and Case, the floor managers of Title VII in the Senate explained:

> "* * * It must be emphasized that discrimination is prohibited as to any individual. While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against."[38]

In sum on this point, Petitioners assert that seniority is to be individually determined,[39] and allocated upon a showing of the "rightful place" which would have been occupied absent discrimination. The Sixth Circuit in *Thornton*, and the Fifth in *Bing* originally took that approach.[40] But in *Rodriguez* and the instant case, the Fifth Circuit looks only to the class, rejects the trial court's focus upon the facts pertinent to each individual, and awards remedy to the class, without regard to which of those in the class were actually damaged.

Moreover, the Court of Appeals specifically refuses to apply this Court's decision in *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (1973); viewing it as "inapplicable to a pattern or practice suit such as the one before us." 517 F.2d at 316; App. 27.

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[38] EEOC, Legislative History of Titles VII and XI of the Civil Rights Act of 1964 (hereinafter Leg. Hist., p. 3040).

[39] Teamsters have substantial experience in ascertaining pertinent facts and settling or arbitrating seniority claims. "One third of the time of union officers is spent in employee grievances over seniority." 84 Harv. L.R. 1109 at 1157.

[40] Though, as we have indicated, there is clear conflict between the Sixth in *Thornton*, and the Fifth in *Bing*, *Rodriguez*, and the instant case as to whether present desire to transfer is sufficient to base award of carryover seniority without some showing of prior intent to make the move.

2

Hard-bargained admittedly lawful contractual rights assuring job security and recognized by this Court to be of "overriding importance"[41] must give way, the Circuit Court says, only because a third party—the employer—discriminated in hiring and job assignment. According to the Court of Appeals, employees who had no part in the discrimination must be deprived of lawful contractual rights to job security solely because of their employer's wrongs. Drivers on layoff with contractual rights to recall must give way to beneficiaries of the Circuit Court's order, despite a finding by the Court of Appeals that the contract providing recall rights "was not adopted for discriminatory purposes."[42]

This jettisoning of contract rights is required despite the fact that the contracts have none of the elements of "line of progression."[43] or racial blockages on an escalator from entry level to skilled jobs—so familiar in the case law relating to industrial plants, but wholly inapposite here. Entry into any Teamster freight unit is at top level. The wage is the same for the newest and the oldest employee.

Nevertheless the Circuit Court requires wholesale carryover unit seniority to the beneficiaries of its order, and thus substantially diminishes the contract rights of incumbent and laid-off drivers.

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[41] *Humphrey v. Moore*, 375 U.S. 335, 346.

[42] See 517 F.2d 299 at 322 (App. 41) where the Circuit Court held:

> We recognize that the Union contract provision granting laid-off LDs a three-year period in which they may move into vacancies at their home terminal without competition was not adopted for discriminatory purposes. Nevertheless, we believe that to allow LDs a three-year priority right on future openings would unduly impede the eradication of past discrimination.

[43] See 517 F.2d at 305; App. 6.

The decision thus runs afoul of the statute which assures in § 703(h) that application of bona fide seniority systems is not unlawful.[44] The statutory language is reinforced by the legislative history. Senators Clark and Case, the Senate managers of the bill, disturbed by assertions of those who opposed the bill that Title VII would "destroy seniority,"[45] published an authoritative memorandum, which established that:

> Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business had been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a non-discriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier. (110 Cong.Rec. 6992, Daily ed. 4/8/64).

The memorandum makes it clear that Title VII does not require that incumbent whites be fired so that Blacks may be hired or that their seniority rights be curtailed for the benefit of new Black employees; such action would clearly involve preferring these Blacks because of their race, and would subvert the basic principle of any seniority system.

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[44] § 703(h) provides:

> (h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin; . . .

[45] See 110 Cong. Rec. 459 (daily ed. 1/15/64); 6871 (daily ed. 4/7/64); 12783 (daily ed. 6/10/64).

This legislative history also demonstrates that the statute did not authorize, much less require, a court to accelerate the advancement of Blacks simply because of their race. Yet the Court of Appeals quite candidly tailors a remedy for just that purpose, stating that a ". . . purpose of seniority carryover . . . is to give the discriminatee the incentive to transfer . . ."[45a]

3

The conclusion of the Court of Appeals that T-DC and IBT "have engaged in an extensive pattern of employment practices unlawful under Title VII . . . ,"[46] is based in large part upon a statistical showing of ratios of majority to minority incumbencies in 1971.

The Circuit Court views incumbency figures in 1971 as "of decisive significance" and demonstrating "flagrant statistical deviations."[47] The fact is, however, that pre-Act, the T-DC figures were much worse; and the employer's pre-Act discrimination is acknowledged. The further fact, undisputed but not displayed in the Circuit Court's Opinion, is that while T-DC system employment declined from 7,238 in 1967 to 6,424 in 1972 (a decrease of 11%) the number of minorities increased from 512 to 677 in the same years (an increase of 32.2%).[48]

[45a] 517 F.2d 299 at 318; App. 31.

[46] 517 F.2d 299 at 317; App. 29.

[47] 517 F.2d at 314; App. 23. A line of lower court cases collected at note 27 of the Circuit Court's Opinion (at p. 313) also hold statistical deviations of ratios of incumbent workers to be of critical, perhaps decisive significance in proof of racial discrimination.

[48] In the only terminals about which the Government produced witnesses total employees declined by 12%, while percentage of minorities increased 20.6%, with increase of blacks at these ten terminals to 28.5% of the work force. See Exhibit "UU" and undisputed testimony at Ct. of Appeals App. p. 451ff. A T-DC campaign to hire minorities resulted in the year 1971 "new hires" being

Indeed, the Circuit Court acknowledges the "recent minority hiring progress stands as a laudable good faith effort to eradicate the effects of past discrimination in the area of hiring and initial assignment;" 517 F.2d 299 at 316, App. 27, 28.[49]

The *pertinent* statistics then are those relating to post-Act hiring and job placement. Those statistics show meaningful, and effective progress in minority employment—indeed, at a ratio showing *preference* for minorities.

The Act and its legislative history make clear that "if a business had been discriminating in the past and as a result has an all white working force, when the Title comes into effect the employer's *obligation would be simply to fill future vacancies on a non-discriminatory basis.* He would not be obliged—or, indeed permitted— to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or once Negroes are hired, to give them special seniority rights at the expense of white workers hired earlier," 110 Cong. Rec. 7212-7215 (4/8/64), emphasis added.

Disregarding the statute and its legislative history, the Circuit Court finds pattern or practice on the basis of inapposite statistics—and refuses to evaluate those which demonstrate the pertinent facts. By this simplistic approach—viewing present incumbency ratios rather than the post-Act hiring and job alloca-

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16.9% minority—while significantly 18.3% of the newly hired western road drivers were minorities. In the western portion of the system 23.1% of the new hires in 1971 were minorities. And this despite the fact that the undisputed evidence is that qualified minority road drivers are in short supply.

[49] The Opinion notes that the total number of minorities employed increased from 7.1% in 1967 to 10.5% in 1972 and to 13% in 1973. During 1971, 16.9% of new hires were members of minority groups, and during the first six months of 1973, 72 out of 113 new hires, or 64% were minority group members. 30% of the road drivers hired in 1973 (29 of 95) were minority group members. 517 F.2d at 316, note 31; App. 28.

tion movements—a pattern or practice of discrimination will always appear. There can be no defense to such a claim—if statistics held dispositive by the Circuit Court are permitted to establish the violation.

For pre-1974 there were nationwide patterns and practices of discrimination—else the Act would not have been passed. Is every employer and every union engaged in a pattern or practice of resistence to the full enjoyment of any of the rights secured by this Title" (§707(a)) until whites have been fired, or only minorities have been hired and allocated to each classification to bring present incumbency ratios, plantwide and unit, up to standard Metropolitan Statistical Area ratios?

The opponents of Title VII, seeking to defeat it, publicized that the bill's "true interest and purpose" was to achieve racial balance, not merely to end discrimination.[50] Specifying the "threat" which they perceived, the opponents of Title VII declared:

> "Under the power granted in this bill, if a carpenters' hiring hall, say, had 20 men awaiting call, the first 10 in seniority being white carpenters, the union could be forced to pass them over in favor of carpenters beneath them in seniority, but of the stipulated race. And if the union roster did not contain the names of the carpenters of the race needed to 'racially balance' the job, the union agent must then go into the street and recruit members of the stipulated race in sufficient number to comply with Federal orders, else his local could be held in violation of Federal law.
>
> "Neither compentence nor experience is the key for employment under this bill. Race is the principal, first, criterion."[51]

[50] EEOC Legislative History of Titles VII and XI of the Civil Rights Act of 1964, pp. 2067-68.

[51] Idem. p. 2071.

These accusations were countered by the bill's sponsors, viz:

> "It must also be stressed that the Commission must confine its activities to correcting abuse, not promoting equality with mathematical certainty. In this regard, nothing in the title permits a person to demand employment. Of greater importance, the Commission will only jeopardize its contined existence if it seeks to impose forced racial balance upon employers or labor unions. Similarly, management prerogatives, and union freedoms are to be left undisturbed to the greatest extent possible. Internal affairs of employers and labor organizations must not be interfered with except to the limited extent that correction is required in discrimination practices. Its primary task is to make certain that the channels of employment are open to persons regardless of their race and that jobs in companies or membership in unions are strictly filled on the basis of qualification."[52]

And on the Senate side, the Bill's sponsors were even more specific. Senators Clark and Case explained:

> "There is no requirement in Title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of Title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race. * * *"[53]

The bill was passed upon these assurances.

Yet implicit in the Circuit Court's ruling here is that failure to move from imbalance in 1964 to present racial balance in the work force is "of decisive significance" in determining the existence of violation of the Act.

[52] Idem. p. 2150.

[53] Idem. p. 3040.

4

From the error just exposed flow yet two other errors in the Circuit Court's analysis which should be corrected here. Having bootstrapped a pattern or practice from pre-Act, inapposite statistics, the Circuit Court then places the burden upon the defendants to show that individuals within the class were not the victims of discrimination.[54]

And to compound the error, the Circuit Court refuses to apply "the analytical steps delineated by the recent case of *McDonnell Douglas v. Green*, 411 U.S. 792 (1973);" on the ground that criteria by which discrimination is proved in an individual's suit under §§ 703 and 704 are "inapplicable to a pattern and practice suit."[55]

Respectfully, we suggest it does not make sense to accord more relief—or require a lesser proof—when the government sues, than when an individual makes the claim. In either instance, the inquiries are: was there racial discrimination—was the individual damaged thereby? What will it take to put the worker in the position he would have enjoyed absent discrimination? It will not do to evade these inquiries—and grant pay or seniority or other employment benefits solely on the basis of race.

5

Finally, the error of the Circuit Court in allowing seniority to be allocated in the absence of the unions which have contracted for that seniority[56] should be reviewed here.

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[54] 517 F.2d 299 at 315, headnote 6. Cf. *Rodriguez v. ETMF*, 505 F.2d 40 at 54 (5th Cir. 1974): "Once the plaintiffs established a prima facie case, the burden fell to the defendants to rebut the statistics . . ."

[55] 517 F.2d 299 at 316; App. 27.

[56] 517 F.2d 299 at 310; App. 16-18.

The National Master Freight Agreement provides with respect to seniority only that "seniority rights shall prevail under this agreement . . ." and "the extent to which seniority shall be applied and accrued as well as the methods and procedures of such application shall be clearly set forth in each of the Supplemental Agreements." And it is stipulated that seniority rights are defined in the local union contracts.[57]

Other panels of the Fifth Circuit have recently dismissed the IBT in Title VII cases, recognizing that which is stipulated here, that the collective bargaining contracts are with autonomous local unions, not the International, and the seniority provisions are in area or local supplements. So in *Resendis v. Leeway*, 505 F.2d 69 (1974), the Fifth Circuit held: "We find no violation of Title VII by the defendant Teamsters International. See *Herrera v. Yellow Freight System, Inc.* (5th Cir. 1974), 505 F.2d 66, n. 2."

And in *Herrera* it was held: "Because the separate seniority lists originate at the Southern Conference level, we find no violation of Title VII by the defendant Teamsters International," 505 F.2d 66 at 68.

Here, the *Herrera* and *Resendis* decisions by another panel of the Fifth Circuit were ignored, and seniority rights determined in the absence of the union entities which had negotiated and are charged with the duty of enforcing the seniority provisions of the contract.[58]

Both as a matter of law, and of sensible labor relations, the recognized bargaining agent which structured the particular

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[57] See Pre-Trial Order, ¶ 3(6).

[58] Yet another panel of the Fifth Circuit has affirmed a ruling that where an autonomous local union is the bargaining agent and subject to a duty of fair representation, the International with which it is affiliated may not be held to a duty of fair representation. *Encina v. Tony Lama*, 316 F.Supp. 239, 245; affirmed, 448 F.2d 1264 (5th Cir. 1971).

seniority plan, and which daily polices the seniority provisions of the local contract, should be before the court which applies, or accommodates the seniority article to the requirements of the Civil Rights Act. See the District Court's Opinion in preliminary stages of this case, 335 F.Supp. 246, App. 45-49.

Pertinent here is the recent Sixth Circuit's holding in *Meadows v. Ford Motor Company*, 510 F.2d 939, 949 (1975):

> ". . . where the burden of retroactive pay falls upon the party which violated the law, the burden of retroactive seniority for determination of layoff would fall directly upon other workers who have themselves had no hand in the wrongdoing found by the District Court.
>
> * * * * * * * *
>
> a grant of retroactive seniority would not depend solely upon the existence of a record sufficient to justify back pay under the standards of the Back Pay Section of this opinion. The court would, in dealing with job seniority, need also to consider the interests of the workers who might be displaced as well as the interests of the employer in retaining an experienced work force. We do not assume, as our brethren in the Fifth Circuit appear to (Local 189, AFL-CIO, CLC v. United States, 416 F.2d 980, cert. denied, 397 U.S. 919, 90 S.Ct. 926, 25 L.Ed.2d 100 (1970)), that such reconciliation is impossible, but as is obvious, we certainly do foresee genuine difficulties. See also Jurinko v. Edwin L. Wiegand Co., 477 F.2d 1038 (3d Cir.), vacated, 414 U.S. 970, 94 S.Ct. 293, 38 L.Ed.2d 214 (1973), reinstated, 497 F.2d 403 (3d Cir. 1974). Cf. Local 189, *supra*; Franks v. Bowman Transportation Co., 495 F.2d 398 (5th Cir.), cert. denied, 43 U.S.L.W. 3330, 419 U.S. 1050, 95 S.Ct. 625, 42 L.Ed.2d 644 (1974) (No. 74-424).
>
> On remand the District Judge may desire to hear the policy questions involved in this problem before remanding the individual claims to the Master. For purposes of that hearing notice should be given to the employees likely to be affected and intervention should be allowed from appropriate representatives."

The Fifth Circuit in the instant case rejected the Sixth Circuit's view and held ". . . that adequate and effective relief may be granted without unduly prejudicing the absent local unions . . ." 517 F.2d at 311, App. 18.

CONCLUSION

Accordingly, a writ of certiorari should issue to review the judgment.

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No. 75-636

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
Petitioner

vs.

UNITED STATES OF AMERICA
Respondent

SUPPLEMENT TO PETITION FOR CERTIORARI

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SUPPLEMENT TO PETITION FOR CERTIORARI

Petitioner respectfully advises the Court that there is additional conflict in the Circuits as to question No. 3 in the Petition for Certiorari in this case.

On February 23, 1976, the United States Court of Appeals for the Fourth Circuit rendered its Opinion in *Patterson* v. *American Tobacco Co.*, ... F.2d ....., 12 F.E.P. Cases 314, (3-6-76). We append a copy of the Fourth Circuit's Opinion.

In *Patterson*, the Fourth Circuit holds (..... F.2d ..... at ....., 12 F.E.P. Cases 314 at 319, 320):

> The district court correctly found that the denial of transfer between the branches without retention of company seniority perpetuates the effect of past discrimination. We believe, however, that the relief ordered by the district judge is broader than necessary. Title VII does not require the company or the union to

forego the benefits of separate, nondiscriminatory seniority rosters. "Application of the Act normally involves two steps. First, identification of the employees who are victims of discrimination, and second, prescription of a remedy to correct the violation disclosed by the first step. The Act does not require the application of the remedy to employees who are not subject to discrimination." United States v. Chesapeake and Ohio Ry., 471 F.2d 582, 593, 5 FEP Cases 308, 317 (4th Cir. 1972). The only employees who suffered discrimination were blacks who could not obtain jobs in the fabrication departments because of their race. Consequently, they are the only employees who should be allowed to transfer under the posting and bidding system from one branch to the fabrication department in the other branch on the basis of their company seniority. Black employees need not be allowed to transfer with company seniority to jobs in prefabrication, because they were never barred from these jobs in the first place.

This conflicts with the Fifth Circuit's holding in the instant case: ". . . for all members of the class there should be full company employment seniority carryover for bidding and layoff purposes . . ." 517 F.2d 299 at 321; App. to Pet. for Cert., p. 38.

Yet another conflict appears. In the instant case carryover seniority "for bidding . . . purposes" is awarded (*ibid.*). But the Fourth Circuit reverses a district court's award of augmented bidding seniority, holding, ... F.2d ....., 12 F.E.P. Cases 314 at 321-322, that increased bid seniority which there, as here, would result in "bumping" incumbents was not authorized by the statute, viz, 12 F.E.P. Cases at 322:

The enactment of Title VII was the result of many concessions, including the unequivocal assertion by proponents of the legislation that it was not intended to be used to displace incumbent workers. A primary goal of Title VII is to induce voluntary compliance by employers and unions. Section 20000e-5; see EEOC v. Hickey-Mitchell Co., 507 F.2d 944, 948, 8 F.E.P. Cases 1281 (8th Cir. 1974). Demoting employees, especially those who are not responsible for wrongdoing, undoubtedly would encounter more resistance than deferring their future expectancies. As this case illustrates, bumping is an unsettling process. Its domino effect adversely affects employees who have done no wrong and who, indeed, may have been the victims of discrimination.

The effects of bumping are exacerbated by another aspect of Title VII. The Act does not provide a definitive catalogue of unlawful employment practices. Congress placed this responsibility on the EEOC and, ultimately, the courts. It soon became obvious that overt discrimination is not the only obstacle to equal employment opportunity. As a result of litigation, many "practices, procedures, or tests neutral on their face, and even neutral in terms of intent" have been exposed as discriminatory and condemned. See Griggs v. Duke Power Co., 401 U.S. 424, 430, 3 F.E.P. Cases 175 (1971); United States v. Dillon Supply Co., 429 F.2d 800, 804, 2 F.E.P. Cases 785 (4th Cir. 1970). There is no reason to suppose that this process will soon abate. Bumping could mean that employers and workers would likely have their business and their working lives rearranged by court decrees from time to time, as various unlawful employment practices are identified. See generally Note, Title VII, Seniority Discrimination, and the Incumbent Negro, 80 Harv. L. Rev. 1260, 1274-75 (1967).

These conflicts between the Fourth and Fifth Circuits constitute additional reason for grant of certiorari.

Respectfully submitted,

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PATTERSON v. AMERICAN TOBACCO CO.

U.S. Court of Appeals, Fourth Circuit (Richmond)

PATTERSON, et al. v. THE AMERICAN TOBACCO COMPANY, a Division of American Brands, Inc.; Same v. TOBACCO WORKERS' INTERNATIONAL UNION and LOCAL 182, TOBACCO WORKERS' INTERNATIONAL UNION; Same v. THE AMERICAN TOBACCO COMPANY, a Division of American Brands, Inc., TOBACCO WORKERS' INTERNATIONAL UNION, and LOCAL 182, TOBACCO WORKERS' INTERNATIONAL; UNION; EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. LOCAL 182, TOBACCO WORKERS' INTERNATIONAL UNION (AFL-CIO); Same v. AMERICAN BRANDS, INC., doing business as American Tobacco Company, Inc., Nos. 75-1259, 75-1260, 75-1261, 75-1262, and 75-1263, February 23, 1976.

CIVIL RIGHTS ACTS OF 1866 AND 1964

—Racial discrimination—Promotion • 108.3178 • 108.2145

Finding that employer and union maintained promotional policies that discriminated on basis of race after effective date of Title VII is not clearly erroneous.

—Remedy — Promotion — Job descriptions • 215.681

Order requiring employer that maintained discriminatory promotional policies to provide definite job descriptions so as to implement fair method of promotion clearly was warranted.

—Remedy — Promotion — Line of progression • 215.651 • 225.371

Employer that had discriminated on basis of race in job

assignments properly was ordered to abolish six of its nine lines of progression, since lines of progression perpetuated effects of past discrimination, and six lines were not justified by business necessity.

—Remedy — Seniority — Merger of rosters — Transfer • 215.225 • 215.205

Federal district court erred when, to remedy employer's discriminatory job assignment policies, it ordered establishment of single seniority roster to cover two of employer's facilities so that all employees in each facility could bid for posted jobs in other facility, even though court correctly found that denial of transfer between facilities with retention of company seniority perpetuates effects of past discrimination, since only employees who suffered from discrimination were blacks who could not obtain jobs in fabrications departments because of their race, and therefore they are only employees who should be allowed to transfer to fabrication departments on basis of company seniority.

CIVIL RIGHTS ACT OF 1964

—Employees who work in different locations • 108.01

Section 703(h) of Civil Rights Act of 1964, which permits employer to apply different standards of employment to "employees who work in different locations," is inapplicable to tobacco company that maintains two facilities located some distance apart, since (1) employees for both facilities are hired from same labor market, (2) jobs in fabrication departments of each facility can be filled just as well by transferees as by persons hired off street, (3) same collective bargaining contract covers employees at both facilities, (4) company contractually has reserved

right to shift employees from one facility to other without depriving them of seniority, (5) company's office serves both facilities, (6) one facility ships other facility's products, and (7) present differences in working conditions are remnants of past intentional discrimination.

—Remedy — 'Bumping' of incumbent employees • 215.651

Federal district court erred when it ordered employer, which had engaged in racial and sex discrimination, to implement system whereby senior black and female employees could "bump" incumbent white male employees from preferred jobs, notwithstanding lack of employment opportunities because of decrease in employment; no distinction is drawn between incumbent employees who obtained their positions before effective date of Title VII and those who obtained their positions after effective date of Title VII. (1) Bumping is unsettling process the domino effect of which would (a) affect adversely employees who have done no wrong and who, indeed, may have been victims of discrimination and (b) disrupt employer's business each time practice is identified; (2) victims of discrimination have back-pay remedy.

—Remedy — Back pay • 210.304 • 210.315 • 210.051

Employee who unlawfully is denied promotion is entitled to back pay from date of such denial, subject to statute of limitations, until he receives promotion. Back pay should be awarded for period preceding date of judgment, supplemented by award equal to estimated present value of lost earnings that are reasonably likely to occur until employee can assume his new position, or, as another alternative, federal district court may exercise continuing jurisdiction and

make periodic back-pay awards until he is promoted.

—Remedy — Back pay — Components • 210.109

Back-pay awards for employees who unlawfully were denied promotions must include increments for pensions and profit sharing.

CIVIL RIGHTS ACT OF 1866

—'Bumping' of incumbent employees — Relationship to Title VII • 215.651 • 106.0642

Bumping of incumbent white employees is not available under 42 U.S.C. § 1981 to remedy employer's discriminatory promotion system, even though legislative history of Title VII of Civil Rights Act of 1964 cannot support decision that such remedy is unavailable under § 1981; pragmatic considerations against availability of such remedy under Title VII apply with equal force to § 1981, and in fashioning substantive body of law under § 1981, courts should look to principles of law created by Title VII.

CIVIL RIGHTS ACTS OF 1866 AND 1964

—Union liability — Local union • 108.2145

Local union properly was found liable under 42 U.S.C. § 1981 and Title VII for its role in maintaining racially discriminatory promotion system, where (1) local acquiesced in employer's maintenance of lines of progression that perpetuated effects of past discrimination, (2) it did not negotiate for removal of qualification requirements for promotion until 1968, and (3) when employer rejected its proposal for company-wide seniority system, it settled for assurances of indemnity that would protect its treasury against claims of its members.

—Union liability — International union • 108.2103 • 108.2145

International union properly was held liable under 42 U.S.C. § 1981 and Title VII for racially discriminatory promotion system, notwithstanding contention that it was not responsible for collective bargaining contracts negotiated by local union with employer, since international vice president acted as "advisor" to local during negotiations, and international's constitution requires that contract negotiated by local not be executed until approved by international.

CIVIL RIGHTS ACT OF 1964

—Relationship of charge to action • 108.699

EEOC may sue employer under Title VII for alleged sex discrimination against women, even though only charge of sex discrimination was filed by male employee.

—Sex discrimination — Promotion — Transfer — Job assignments • 108.4131 • 108.4165

Employer properly was found to have violated Title VII by absence of definite job descriptions and maintenance of lines of progression and obstacles to transfer, all of which perpetuated effects of past discrimination in job assignments against women.

—Failure to conciliate • 108.7104

EEOC's Title VII action against local union for allegedly causing employer to discriminate on basis of sex should have been dismissed due to EEOC's failure to attempt conciliation with local before suing. Although EEOC made offer to conciliate while action was pending and local accepted offer, EEOC's representative conceded in course of

discussion that he had no authority to settle action.

CIVIL RIGHTS ACTS OF 1866 AND 1964

—Racial and sex discrimination — Supervisors • 108.3178 • 108.4164

Employer correctly was found to have violated 42 U.S.C. § 1981 and Title VII by discriminating against blacks and women in appointment of supervisors.

—Remedy — Supervisory appointments • 215.781

Federal district court properly ordered employer that discriminated against blacks and women in selecting supervisors to post job descriptions for supervisory positions and to devise objective criteria for selecting new appointees, but court also should order union to publish objective criteria for making its recommendations for supervisory appointments.

—Remedy — Quota • 245.451

Section 703(j) of Civil Rights Act of 1964, which forbids preferential hiring to change employer's racial imbalance, does not prohibit preferential treatment to remedy unlawful discrimination.

—Remedy — Appointment of supervisors — Quota — • 245.801 • 215.781

Federal district court erred when, to remedy employer's prior discrimination against blacks and women in appointments to supervisory positions, it ordered employer to fill supervisory positions with blacks and women until percentages of black supervisors and female supervisors equal percentages of black and female workers in standard metropolitan statistical area (SMSA), since in determining

whether employer has appointed enough black and female employees to supervisory positions, court should not have taken into account supervisory appointments made before enactment of Title VII, and it should have considered percentages of black and female supervisors in SMSA rather than percentages of all blacks and women in workforce. Rate at which employer currently is appointing blacks and women to supervisory positions is sufficient to show that there is no compelling need for imposition of quota.

CIVIL RIGHTS ACT OF 1964

—Timeliness of charge • 108.566

Charge filed with EEOC almost one year after employer claims its discriminatory practices ended was timely, since federal district court properly found that discrimination was of continuing nature.

CIVIL RIGHTS ACT OF 1866

—Statute of limitations — Tolling • 108.6918 • 106.0642

Filing of charge with EEOC did not toll statute of limitations applicable to 42 U.S.C. § 1981.

—Statute of limitations — Applicable statute • 108.6921

Virginia's two-year statute of limitations, rather than its five-year statute, applies to action under 42 U.S.C. § 1981.

CIVIL RIGHTS ACT OF 1964

—Remedy — Back pay — Limitations period • 210.486

Federal district court, which (1) permitted EEOC to sue employer for discrimination against women on basis of investigation although this discrimination was not alleged in charge and (2) ruled that back pay for sex discrimina-

tion should accrue as of two years before filing of charge, is ordered to reconsider this ruling in light of court of appeals' decision in EEOC v. General Electric Co. (12 FEP Cases 21).

Appeals from the U.S. District Court for the Eastern District of Virginia (8 FEP Cases 778 and 11 FEP Cases 577). Affirmed in part and modified in part, and remanded.

Henry L. Marsh, III, Richmond, Va. (S. W. Tucker, John W. Scott, Jr., Randall G. Johnson, and Hill, Tucker and Marsh, Richmond, Va., and Jack Greenberg, Elaine R. Jones, Barry L. Goldstein, and Morris J. Baller, New York, N.Y., on brief), for appellees in Nos. 75-1259 and 75-1260 and appellants in No. 75-1261.

Henry T. Wickham, Richmond, Va. (John F. Kay, Jr., Kenneth V. Farino, and Mays, Valentine, Davenport and Moore, Richmond, Va., and Chadbourne, Parke, Whiteside and Wolff, Paul G. Pennoyer, Jr., Arnold Henson, Bernard W. McCarthy, and Bernard J. Dushman, New York, N.Y., on brief), for appellant in Nos. 75-1259, 75-1261, and 75-1263.

Herbert L. Segal, Louisville, Ky. (Irwin H. Cutler, Jr., Walter Lapp Sales, and Segal, Isenberg, Sales and Stewart, Louisville, Ky., and Jay J. Levit, Stallard and Levit, and James F. Carroll, Richmond, Va., on brief), for appellants in No. 75-1260, appellant unions in No. 75-1261, and appellant local union in No. 75-1262.

Margaret C. Poles (Julia P. Cooper, Acting General Counsel, Joseph T. Eddins, Associate General Counsel, and Beatice Rosenberg and Charles L. Reischel, Assistant General

Counsels, on briefs), for appellee in Nos. 75-1262 and 75-1263.

Before WINTER, BUTZNER, and WIDENER, Circuit Judges.

Full Text of Opinion

BUTZNER, Circuit Judge:—These appeals and cross appeals question certain provisions of a judgment entered in consolidated actions brought by the Equal Employment Opportunity Commission and several black employees of the American Tobacco Co. against the company, the Tobacco Workers International Union, and its Local 182. The case concerns the application of Title VII of the Civil Rights Act of 1964 [42 U.S.C. § 2000e et seq.] and 42 U.S.C. § 1981 to redress race and sex discrimination in working conditions.[1] Following is a summary of the district court's decision and our disposition of the assignments of error:

I. The district court defined the class of black employees as those, whether currently employed or not, who worked on or after July 2, 1965, the date Title VII became effective. It found no discrimination in hiring but ruled that the company and the labor organizations had engaged in unlawful employment practices by racial discrimination in the promotion of employees. It ordered American to institute company-wide seniority, eliminate certain lines of progression from lower to higher paying jobs, post definite job

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[1] 42 U.S.C. § 2000e-2 prohibits both employers and labor organizations from engaging in employment practices that discriminate on the basis of race or sex.

42 U.S.C. § 1981 assures all persons the same right to make and enforce contracts as is enjoyed by white citizens.

descriptions, grant back pay, and adjust pensions and profit sharing plans in amounts to be determined at a subsequent hearing. The court also ordered that white incumbents be bumped from jobs for which senior black employees were qualified.

Neither party has assigned error to the court's finding of no discrimination in hiring. We find no error in the designation of the class. We affirm the finding of discrimination in promotions and approve the relief ordered by the court, except for provisions of the judgment dealing with company-wide seniority and bumping.

II. The district court ruled that the EEOC was empowered to bring suit to eliminate discrimination against women, although the initial charge dealt only with discrimination against men. It defined the class of aggrieved women in terms similar to those used to describe the class of black employees. The court found discrimination in promotions but not in hiring, and it ordered relief similar to that afforded black employees.

III. The district court found discrimination in the selection of supervisors and ordered the company to prepare written job descriptions and objective criteria for appointments. It also ordered preferential hiring of blacks and women to fill supervisory vacancies.

We affirm these aspects of the court's judgment except for those dealing with preferential hiring.

IV. The district court held that the actions were timely filed, that the statute of limitations for an action brought under § 1981 is five years, and that the statute is not tolled by filing a charge with the EEOC. It also held that back pay

for discrimination against women should accrue from two years before the charge was filed.

Except for the application of the five-year statute of limitations and the accrual of liability for the women's back pay, we affirm these rulings. The proper limitation, we hold, is two years, and the accrual date for back pay must be reexamined in light of EEOC v. General Electric Co. —— F.2d ——, 12 FEP Cases 21, No. 74-1974 (4th Cir., 1975), which was decided after the district court wrote its opinion.

[FACTS OF CASE]

I. American operates three facilities in Richmond, Virginia. The "Virginia Branch" makes cigarettes; the "Richmond Branch" makes pipe tobacco; and the "Richmond Office" keeps accounts and records for both branches. Approximately 250 of the 1,280 employees at both branches are black, and in the Richmond office 13 of the 62 employees are black. In each branch the prefabrication department blends and prepares tobacco before sending it to the fabrication department, which manufactures the finished products. Workers in prefabrication generally earn less than those in fabrication, and most employees at the Richmond branch make less than those at the Virginia branch.

Before 1963 the union and the company overtly segregated employees by race with respect to job assignments, cafeterias, restrooms, lockers, and plant entrances. White employees were represented by Local 182 of the Tobacco Workers International Union, while black employees were represented by Local 216. Blacks were generally assigned to positions in the prefabrication departments. The higher paying jobs in fabrication were largely reserved for white

employees. Each department had its own seniority roster, on which promotions depended. Employees could not transfer from one department to another without forfeiting their seniority.

In September 1963 the black union was assimilated by the white Local 182 to comply with an executive order relating to the government's purchase of supplies. Simultaneously, the company abolished departmental seniority, but it continued to maintain separate rosters at the two branches. The 1963 changes did not eliminate racial discrimination from the company's promotion practices. The district court found that until 1968 the company utilized a system of unwritten qualifications which denied black employees access to the higher paying jobs at the Virginia branch. For certain positions an employee had to be familiar with the duties of the new job in the opinion of his supervisor. Also, he had to work a minimum number of hours on a temporary basis to qualify as an operator of a making or packing machine. Consequently, black employees not working in proximity to the higher paying jobs had limited opportunity to qualify, regardless of their seniority. Combined with static employment in the tobacco industry, this system allowed little advancement of black employees from jobs in prefabrication to those in fabrication. Indeed, from 1963 to 1968 there was an increase of only four blacks in the fabrication department at the Virginia branch.

[RICHMOND BRANCH]

The Richmond branch had no qualification restrictions on promotions. Instead, supervisors canvassed employees, seeking the senior worker willing to fill a vacany. There

were, however, no written job descriptions. This system provided slight opportunity for black employees to move from prefabrication to fabrication, and from 1963 to 1968, there was an increase of only six black employees in the latter department. As of 1968, only three of the 26 machine operators were black.

In January 1968 the company discontinued its qualifications system. Instead, it posted vacancies and promoted the senior employee who bid for the job. This district court found that this innovation was "facially fair and neutral" but ordered that it be implemented by posting written job descriptions. Furthermore, the district court found that access to certain jobs was barred to black employees by lines of progression and the maintenance of separate seniority rosters for each branch.

Although the company and the union have taken steps in recent years to correct some of the inequalities of the past, the lines of progression, the lack of definite written job descriptions, and barriers to transfer between the branches remain impediments to fair and neutral employment practices. Much must still be done to eradicate any taint of racial discrimination at the plant. The most recent figures available indicate that as of the end of 1973, more than 80 percent of all the employees in the Virginia branch's prefabrication department were black, while in the fabrication department only about 14 percent were black. At the Richmond branch, black employees' penetration into the fabrication department was greater, with blacks comprising more than 38 percent of the workforce. But the lower paying prefabrication department remained almost completely segregated; 92 percent of its employees

were black. These figures provide ample support for the district court's findings that "[t]raditionally, at both branches there have been more blacks in the prefabrication department than whites, and more whites in the fabrication department than blacks."

The company emphasizes that from July 2, 1964, to March 1, 1974, 25 percent of all employees promoted and 20 percent of those advanced to operate automatic machinery at the Virginia branch were black. Also, since the initiation in January 1968 of the posting and bidding procedure, 51.5 percent of the successful bidders have been black. These gross figures, however, include promotions in both prefabrication and fabrication departments, and, while laudable, they do not address the crucial issue of the case—the entry of black employees into the historically white fabrication department. Apart from the fact that many of these promotions were made after charges were filed with the EEOC, the company's reliance on the overall promotion rate in both departments misses the mark because blacks have always been promoted in the historically black prefabrication department. Moreover, as late as 1973, of the approximately 200 hourly-paid non-craft job classifications at Virginia, 18 had never been held by white and 10 had never been held by blacks. Even more rigid segregation characterized the Richmond branch; of the approximately 43 hourly-paid, non-craft job classifications, 21 had never been held by white and nine had never been held by blacks.

[CONCLUSION]

We conclude, therefore, that the record amply supports the district court's finding that after the effective date of

Title VII the company and the union discriminated in the promotional policies of their bargaining agreements and practices. Tested by familiar standards, the court's findings must be sustained.[2]

We next consider the assignments of error that challenge the relief ordered by the district court. The directive that definite job descriptions must be provided in order to implement a fair method of promotion was clearly warranted. Cf. Brown v. Gaston County Dyeing Machine Co., 457 F.2d 1377, 4 FEP Cases 514 (4th Cir. 1972).

In those jobs that were filled according to lines of progression, an employee had to work in the first job before proceeding to the next, and so on up to the highest job in the line. Most of these jobs were in the fabrication departments. Since black employees had been largely excluded from the fabrication departments, they held few jobs in most of these lines and could not advance despite their seniority. In this respect, the lines of progression perpetuated the effects of past discrimination in a manner similar to the formerly segregated departmental seniority rosters. On the basis of its evaluation of conflicting expert testimony, the district court held that only three of the nine lines are justified by business necessity.[3] For the others, alternative means such as on-the-job training are available to provide competent workers.

Addressing the discrimination caused by lines of progres-

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[2] Federal Rule of Civil Procedure 52(a) provides in part that "[findings of fact [by the court] shall not be set aside unless clearly erroneous . . ."

[3] The three positions for which lines of progression can be maintained are adjuster, overhaul adjuster, and adjuster prefabrication.

sion, we pointed out in Robinson v. Lorillard Corp., 444 F.2d 791, 799, 3 FEP Cases 653 (4th Cir. 1971), that the vagaries of chance inherent in this promotion system might bar a qualified worker from advancement for years, although he could learn to perform the job competently in a relatively short time. To deal with such situations, we formulated the following standard for ascertaining whether a condition of employment was justified by business necessity:

> "[T]he applicable test is not merely whether there exists a business purpose for adhering to a challenged practice. The test is whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business. Thus, the business purpose must be sufficiently compelling to override any racial impact; the challenged practice must effectively carry out the business purpose it is alleged to serve; and there must be available no acceptable alternative policies or practices which would better accomplish the business purpose advanced, or accomplish it equally well with a lesser differential racial impact." 444 F.2d at 798, 3 FEP Cases at 658.

Measured by this test, the district court's elimination of the six lines of progression was correct.

[TRANSFER REMEDY]

The district court also ordered a single seniority roster for the Virginia and Richmond branches to enable employees in each branch to bid for posted jobs in the other. The order is designed to correct the present effect of past discrimination, which denied black employees entry into the higher paying jobs of the fabrication departments, particularly at the Virginia branch. For example, under the present

method of job assignments, a black employee hired in 1950 at the Richmond branch prefabrication department has no realistic opportunity to secure a higher paying job in the formerly white Virginia fabrication department because he cannot transfer his company seniority to the Virginia branch. If he seeks a new job there, he must forfeit his seniority and start as a new hire.

The district court correctly found that the denial of transfer between the branches without retention of company seniority perpetuates the effect of past discrimination. We believe, however, that the relief ordered by the district judge is broader than necessary. Title VII does not require the company or the union to forego the benefits of separate, nondiscriminatory seniority rosters. "Application of the Act normally involves two steps. First, identification of the employees who are victims of discrimination, and second, prescription of a remedy to correct the violation disclosed by the first step. The Act does not require the application of the remedy to employees who are not subject to discrimination." United States v. Chesapeake and Ohio Ry., 471 F.2d 582, 593, 5 FEP Cases 308, 317 (4th Cir. 1972). The only employees who suffered discrimination were blacks who could not obtain jobs in the fabrication departments because of their race. Consequently, they are the only employees who should be allowed to transfer under the posting and bidding system from one branch to the fabrication department in the other branch on the basis of their company seniority. Black employees need not be allowed to transfer with company seniority to jobs in prefabrication, because they were never barred from these jobs in the first place. Similarly, white employees seeking transfers

are not entitled to utilize company seniority, because they were never barred from fabrication departments. Finally, no employee hired after the cessation of discrimination in job assignments need be allowed to transfer with seniority intact. See, e.g., Russell v. American Tobacco Company, —— F.2d ——, 11 FEP Cases 395, No. 74-1650 (4th Cir., 1975); Robinson v. Lorillard Corp., 444 F.2d 791, 3 FEP Cases 653 (4th Cir., 1971); Quarles v. Philip Morris, Inc., 279 F.Supp. 505, 1 FEP Cases 260, 67 LRRM 2098 (E.D. Va. 1968).

The company and the union assert that this case is distinguishable from departmental seniority cases like Robinson because the Richmond and Virginia branches are in different locations. They emphasize that the branches make different products, have different managements, hire separately, and are some distance apart. For these reasons, they argue, the case falls within 42 U.S.C. § 2000e-2(h), which provides that:

> "Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system . . . or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin. . . ."

[RUSSELL CASE]

Noting that neither the Act nor the regulations define the statutory term "employees who work in different locations," we recently construed § 2000e-2(h) in Russell v.

American Tobacco Co., —— F.2d ——, 11 FEP Cases 395, No. 74-1650 (4th Cir. 1975). We pointed out that the labor market is the most important factor in determining whether a company's employees work in different locations. A company operating two or more of its plants with employees who are from the same geographic area and who are unskilled or possess the same skills can assign an applicant to an entry level position in either plant. Therefore, employees the company hired from the same labor market would not generally fall within the statutory class of "employees who work in different locations."

On the other hand, even though a company's plants are in the same city, as they are here, their proximity does not conclusively show that they are in the same location. If one plant requires labor possessing skills different from those of workers at another plant, the company cannot draw from the same labor market to man its plants. Under these circumstances, employees would work at different locations, even though they reside and work in the same geographic area.

American hires employees for both branches from the same labor market. The branches are only a few city blocks apart. There are entry level jobs as both places that require neither particular skills nor experience, and jobs in fabrication can be filled just as well by transferees as by persons hired off the street.

Other facts support the district court's findings that these plants are not in different locations. The same bargaining agreement covers employees at both plants, and the company has contractually reserved the right to shift employees

from one plant to the other without depriving them of seniority. The Richmond office, located in a building at the Virginia branch, serves both branches, and the Virginia branch ships the Richmond branch's products.

There is another reason why the exemption granted in § 2000e-2(h) is not available to American. As we noted in Russell, supra, slip op. at 10, that section contains a proviso that restricts its application to situations where differences in the conditions of employment "are not the result of an intention to discriminate." Past intentional segregation that is perpetuated by a company's seniority system precludes it from claiming that its system is bona fide within the meaning of § 2000e-2(h), Robinson v. Lorillard Corp., 444 F.2d 791, 3 FEP Cases 653 (4th Cir. 1971). Similarly, "where present differences in working conditions are remnants of past intentional discrimination, the proviso of § 2000e-2(h) bars a company from defending its employment practices on the ground that its employees work in different locations." Russell v. American Tobacco Co., —— F.2d ——, ——, 11 FEP Cases 395, 400, No. 74-1650 (4th Cir. 1975), slip op. at 11.

We therefore affirm the district court on this issue but note that on remand it should vacate the provision of its judgment requiring a single seniority roster for both branches. It should substitute an order allowing those black employees who formerly could not obtain jobs in the fabrication departments because of discrimination to utilize their company seniority to bid for such jobs in the fabrication department of either branch. Of course, an employee who transfers must have the capacity to perform

the job after receiving a reasonable amount of training.

[BUMPING REMEDY]

The company and the union also assign error to the part of the district court's order that allowed senior black and female employees to bump junior employees from preferred jobs. The court ordered immediate company-wide posting and bidding on each non-supervisory job in the Richmond and Virginia branches. The only qualifications for advancement were to be seniority and a willingness to learn the job. To facilitate the bidding, the court ordered that job descriptions be posted. It further provided that employees who were displaced by senior blacks or female workers, and therefore had to move to lower paying jobs, must be paid as much as they were in their former jobs. The court explained the reason for this provision of its decree as follows:

> "The present system of posting and bidding adopted in 1968 is fair, although it needs, in the Court's view, further implementation. As indicated in the findings of fact, however, black and female employees in the Richmond Branch and the Virginia Branch have been locked in their jobs as a result of prior discriminatory practices. This is because of the static condition of the tobacco industry generally, and American in particular, and the advent of automation, both of which have limited opportunities for upward movement of present employees and for new hiring." (Appendix at 37-38.)

The court's description of the lack of employment opportunities is well supported by the evidence. No new employees were hired to fill jobs under jurisdiction of the union from September 12, 1955, through June 12, 1964, in the

Richmond branch and May 12, 1966, in the Virginia branch. Employment in both branches decreased from 1953 to 1973 by approximately 1300 workers.

One of the early questions about the construction of Title VII was whether "present consequences of past discrimination [are] covered by the act." Quarles v. Philip Morris, Inc., 279 F.Supp. 505, 510, 1 FEP Cases 260, 67 LRRM 2098 (E.D. Va. 1968). The generally accepted answer is a qualified "yes": employers and unions using pre-Act discriminatory practices to bar employees from filling post-Act vacancies violate the Act. Robinson v. Lorillard Corp., 444 F.2d 791, 3 FEP Cases 653 (4th Cir. 1971); Quarles, supra. On the other hand, Title VII has not been construed to impose a duty to demote incumbents. In Local 189, United Papermakers and Paperworkers v. United States, 416 F.2d 980, 1 FEP Cases 875, 71 LRRM 3070 (5th Cir. 1969), the court rejected the contention that "allowing junior whites to continue in their jobs constitutes an act of discrimination." Judge Wisdom, writing for the court, said:

> "The Act should be construed to prohibit the *future awarding* of vacant jobs on the basis of a seniority system that 'locks in' prior racial classification. White incumbent workers should not be bumped out of their *present* positions by Negroes with greater plant seniority; plant seniority should be asserted only with respect to new job openings. This solution accords with the purpose and history of the legislation." 416 F.2d at 988, 1 FEP Cases at 881, 71 LRRM at 3075.

Every appellate court to whom the issue has been presented has accepted this interpretation.[4] Equally important, when

[4] E.g., EEOC v. Detroit Edison Co., 515 F.2d 301, 10 FEP Cases 239 (6th Cir. 1975); United States v. N. L. Industries, Inc., 479 F.2d 354, 5 FEP Cases 823 (8th Cir. 1973); United States v. Chesapeake & Ohio Ry., 471 F.2d 582, 5 FEP Cases 308 (4th Cir. 1972); United States v. Bethlehem Steel Corp., 446 F.2d 652, 3 FEP Cases 589 (2d Cir. 1971).

Congress was considering the 1972 amendments to Title VII, it approvingly noted Papermakers' construction of the Act.[5]

These precedents cannot be satisfactorily distinguished on the ground that bumping would be required only when the proof discloses a static industry that has few vacancies. The difference between static and dynamic industries is not always readily ascertainable because employment opportunities fluctuate for many reasons over long and short periods. Requiring bumping for static industries while denying it in dynamic industries would introduce into the administration of the Act countless variables for which Congress has made no provision.

[NO DISTINCTION]

Since the Act should not be applied retroactively,[6] it is, of

[5] The section-by-section analysis of the House bill states that "it was assumed that the present case law as developed by the courts would continue to govern the applicability and construction of Title VII." Legislative History of Equal Employment Opportunity Act of 1972, Government Printing Office (1972) at 1844. Papermakers, of course, was a prominent part of that case law.

[6] This principle is established by the legislative history. Senators Clark and Case, two of the bill's sponsors, circulated an interpretative memorandum stating that Title VII's operation was "prospective and not retrospective . . . [T]he employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis." 110 Cong. Rec. 6992 (daily ed. April 8, 1964), quoted in Quarles v. Philip Morris, Inc., 279 F.Supp. 505, 516, 1 FEP Cases 260, 67 LRRM 2098 (E.D. Va. 1968).

course, much easier to justify the retention of incumbents who obtained their positions before the effective date of the Act than the retention of those who were unlawfully preferred after this date. Nevertheless, neither Congress nor the EEOC nor the courts have drawn a distinction between pre-Act and post-Act incumbents. The reasons for applying the Act uniformly are largely pragmatic. The enactment of Title VII was the result of many concessions, including the unequivocal assertion by proponents of the legislation that it was not intended to be used to displace incumbent workers.[7] A primary goal of Title VII is to induce voluntary compliance by employers and unions. Section 2000e-5; see EEOC v. Hickey-Mitchell Co., 507 F.2d 944, 948, 8 FEP Cases 1281 (8th Cir. 1974). Demoting employees, especially those who are not responsible for wrongdoing, undoubtedly would encounter more resistance than deferring their future expectancies. As this case illustrates, bumping is an unsettling process. Its domino effect adversely affects employees who have done no wrong and who, indeed, may have been the victims of discrimination.[8]

[7] The Clark-Case memorandum, note 6 supra, states that an employer "would not be obliged—or, indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of white workers hired earlier." 110 Cong. Rec. 6992 (daily ed. April 8, 1964).

[8] As part of its compliance with the district court's decree, American conducted a canvass of its employees to determine the effect of bumping. The results of that survey are contained in a report filed with this court to supplement the record. The report showed that 40 employees requested jobs to which their plant-wide seniority would entitle them. One of these has already obtained the job he requested. The others would bump eight white male employees and

The effects of bumping are exacerbated by another aspect of Title VII. The Act does not provide a definitive catalogue of unlawful employment practices. Congress placed this responsibility on the EEOC and, ultimately, the courts. It soon became obvious that overt discrimination is not the only obstacle to equal employment opportunity.[9] As a result of litigation, many "practices, procedures, or tests neutral on their face, and even neutral in terms of intent" have been exposed as discriminatory and condemned. See Griggs v. Duke Power Co., 401 U.S. 424, 430, 3 FEP Cases 175 (1971); United States v. Dillon Supply Co., 429 F.2d 800, 804, 2 FEP Cases 785 (4th Cir. 1970). There is no reason to suppose that this process will soon abate. Bumping could mean that employers and workers would likely have their business and their working lives rearranged by court decrees from time to time, as various unlawful employment practices are identified. See generally Note, Title VII, Seniority Discrimination, and the Incumbent Negro, 80 Harv. L. Rev. 1260, 1274-75 (1967).

Finally, although Congress did not intend the Act to be used as a vehicle for displacing incumbents, it did not leave the victims of discrimination without a remedy. Section 2000e-5(g) expressly authorizes a district court to award them back pay. While an employee who has been unlawfully denied a promotion must await a vacancy before advancing, he need not prove that a vacancy exists in order to qualify

31 minority employees out of the jobs they now occupy. We stayed the provision of the decree that required bumping pending this appeal.

[9] See generally Introduction. The Second Decade of Title VII: Refinement of the Remedies, 16 Wm. & Mary L. Rev., 433, 436-37 (1975).

for back pay. Hairston v. McLean Trucking Co., 520 F.2d 226, 11 FEP Cases 91 (4th Cir. 1975); Robinson v. Lorillard Corp., 444 F.2d 791, 3 FEP Cases 653 (4th Cir. 1971).

[BACK-PAY STANDARDS]

In Albemarle Paper Co. v. Moody, 422 U.S. 405, 408, 10 FEP Cases 1181 (1975), the Court explained the standards a district court should follow in awarding back pay to employees who "have lost the opportunity to earn wages because an employer has engaged in an unlawful discriminatory employment practice." The Court said that the back pay provision must be applied in a manner that is "consonant with the twin statutory objectives" of "eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination." 422 U.S. at 421.

To satisfy these objectives, back pay must be allowed an employee from the time he is unlawfully denied a promotion, subject to the applicable statute of limitations, until he actually receives it. Some employees who have been victims of discrimination will be unable to move immediately into jobs to which their seniority and ability entitle them. The back pay award should be fashioned to compensate them until they can obtain a job commensurate with their status. This may be accomplished by allowing back pay for a period commencing at the time the employee was unlawfully denied a position until the date of judgment, subject to the applicable statute of limitations. This compensation should be supplemented by an award equal to the estimated present value of lost earnings that are reasonably likely to occur between the date of judgment and the time

when the employee can assume his new position. See Bush v. Lone Star Steel Co., 373 F.Supp. 526, 538, 7 FEP Case 1258 (E.D. Tex. 1974); United States v. United States Steel Corp., 371 F.Supp. 1045, 1060 n. 38, 7 FEP Cases 322 (N.D. ala. 1973.[10] Alternatively, the court may exercise continuing jurisdiction over the case and make periodic back pay awards until the workers are promoted to the jobs their seniority and qualifications merit. Or perhaps counsel and the court can devise some other convenient method of taking all the effects of past discrimination into account. In any event, the compensation must include, as the district court properly noted, increments for pensions and profit sharing.

Compensatory pay and adjustment of benefits provide monetary relief for discrimination against minority employees but do not afford the satisfaction that comes from being promoted to a more responsible job. Nevertheless, such an intangible benefit does not justify injunctive relief mandating bumping. Weighed against a minority employee's sense of achievement are the harm that demotion will cause to incumbents who have done no wrong and the disruption of the company's business that bumping entails. The survey of employees referred to in footnote 8, supra, indicates that 39 minority employees are seeking jobs held by 8 white men and 31 other minority employees. This sur-

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[10] This measure of compensation is analogous to that awarded in an ordinary tort case, where compensation is assessed for one's loss of earnings whether the loss occurs before or after the judgment is entered. The analogy is apt because a statutory action attacking racial discrimination is fundamentally for the redress of a tort. See Curtis v. Loether, 415 U.S. 189, 195 (1974).

vey, however, does not prove that the employees seeking different jobs were motivated even in part by non-monetary factors, for it was conducted on the assumption that bumping was the only way they could receive better pay and fringe benefits. Since full monetary compensation and the removal of barriers to promotion provide adequate relief to minority employees without disruption to other employees and management, we conclude that neither Title VII nor its legislative history requires bumping in this case.

[§ 1981 REMEDY]

Relief under § 1981 is limited to correcting racial discrimination. See Delavigne v. Delavigne, No. 75-2203, —— F.2d —— (4th Cir. 1976); Willingham v. Macon Telegraph Publishing Co., 482 F.2d 535, 537 n. 1, 5 FEP Cases 1329 (5th Cir. 1973). But apart from this, Title VII and § 1981 provide complementary remedies for employment discrimination, Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 459-60, 10 FEP Cases 817 (1975). Although the legislative history of Title VII cannot support a decision that bumping relief is unavailable under § 1981, the pragmatic considerations we advance apply with equal force to the § 1981 claim. Moreover, "in fashioning a substantive body of law under § 1981 the courts should, in an effort to avoid undesirable substantive law conflicts, look to the principles of law created under Title VII for direction." Waters v. Wisconsin Steel Works of International Harvester Co., 502 F.2d 1309, 1316, 8 FEP Cases 577 (7th Cir. 1974). For these reasons, we hold that bumping relief is not available to American's black employees under § 1981.

On remand, therefore, the district court should modify its

decree to eliminate bumping, but it should take steps to assure that back pay will be computed to include compensation for the entire time that a minority employee is denied a promotion for which he or she is qualified by seniority and ability.

We affirm the district court's award of relief against both the local and the International, except as noted in Part II. The local acquiesced without protest in the lines of progression. Not until 1968 did it negotiate for the removal of the qualification requirements for promotion. In 1968, 1971, and 1974, it proposed a company-wide seniority system that would have allowed transfers between branches. When the company declined, the union settled for assurances of indemnity that would protect its treasury against the claims of its members.

A union may not bargain away minority employees' rights to equal treatment, see Robinson v. Lorillard Corp., 444 F.2d 791, 799, 3 FEP Cases 653 (4th Cir. 1971), and, indeed, it must "negotiate actively for nondiscriminatory treatment" of its minority workers. Macklin v. Spector Freight Systems, Inc., 478 F.2d 979, 989, 5 FEP Cases 994 (D.C. Cir. 1973); see also United States v. N.L. Industries, Inc., 479 F.2d 354, 379, 5 FEP Cases 823, 6 FEP Cases 116 (8th Cir. 1973). The Supreme Court has recently emphasized the duty a union owes to its minority members by pointing out that one of the purposes of a back pay award is to spur unions, as well as employers, to evaluate employment practices and eliminate unlawful discrimination. Albemarle Paper Co. v. Moody, 422 U.S. 405, 417-18, 10 FEP Cases 1181 (1975). Tested by these principles, the district court's imposition of liability on both the local and the

International was warranted by the law and the facts.

[INTERNATIONAL'S LIABILITY]

Nor can we accept the International's argument that it should not be held liable because it was not responsible for ths contracts negotiated by the local. The evidence disclosed that a vice president of the International acted as an "advisor" to the local, playing an active role as the president's deputy in the 1971 and 1974 negotiations for bargaining agreements. Moreover, the constitution of the International provides:

> "It shall be the principal duty of the Local Union to secure satisfactory collective bargaining and working agreements showing an adequate minimum wage and fair working conditions for workers who have become affiliated with the TWIU, provided, however, that no collective bargaining and working agreement shall be consummated until first submitted to the general president who may approve or reject any proposed agreement, and no such agreement can be executed without the approval of the general president or his deputy."

The district court was not obliged to accept representations of the vice president that contradicted the plain meaning of this provision. The court properly concluded that the International's approval of the bargaining agreement pursuant to this provision made it jointly responsible with the local. Cases dealing with an international union's exoneration of liability to an employer are inapposite where its duties to members of its local unions are at issue.

[SEX DISCRIMINATION]

II. The EEOC's complaint contains allegations of discrimination against women employees. The company contends that the commission lacked authority to press this claim because no female employee filed a charge. On the contrary, the company points out, the only charge of sex discrimination was filed by a male employee. The district court overruled the company's motion to dismiss this aspect of the case, holding that the commission could institute the suit if its investigation of the male employee's complaint disclosed discrimination against women.

We affirm the district court. We recently decided this issue adversely to the company's position in EEOC v. General Electric Co., —— F.2d ——, 12 FEP Cases 21, No. 74-1974 (4th Cir. 1975). The company's argument does not persuade us to depart from the conclusions reached in that case.[11]

On the merits of the claim of sex discrimination, we uphold the district court's finding of liability. Because the company's discrimination against women bears many similarities to its discrimination against black employees, we need not recite the evidence in detail. It is sufficient to note that for many years the company overtly segregated jobs by sex, discriminating against women, as the district court found, "with respect to wage structure, departments, seniority and hiring." Even after these practices were nominally eliminated in 1963, their discriminatory effect was perpetuated by lack of definite job descriptions, lines of progression, and obstacles to transfers. The court found that as recently as 1973, 23 of the approximately 200 non-

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[11] See Part IV infra for a discussion of the statute of limitations with respect to this issue.

craft, hourly-paid jobs at the Virginia branch had not been held by women, and six had not been held by men. At the Richmond branch, 32 of the 43 non-craft, hourly-paid jobs had not been held by women, and six had not been held by men. The company has not demonstrated that these segregated positions cannot be filled by persons of the opposite sex. The court also found that from 1967 through 1972 women had a lower mean income than men with comparable seniority.

Again, the district court's findings are supported by the evidence and cannot be set aside as clearly erroneous. The relief the court afforded women is essentially the same as the relief it granted black employees. Accordingly, we approve the relief for women employees, subject, however, to the same modifications of the court's decree that we mentioned in Part I. This relief, however, can be granted only against the company. The complaint against the union for sex discrimination must be dismissed for reasons we will next discuss.

[FAILURE TO CONCILIATE]

The commission's complaint names the company and Local 182 as defendants. The commission acknowledged that it had not attempted to conciliate the charges with the union before filing suit. While the suit was pending, it made an offer to conciliate, which the union accepted. In the course of discussion with the union, however, the commission's representative conceded that he had no authority to settle the suit. Understandably, the conciliation efforts were unsuccessful. The district court, viewing the lapse as technical, held that the belated offer to conciliate and its

acceptance substantially complied with the Act.

The Act requires, however, that after receiving a charge and before bringing a suit the commission must take four steps: serve the charge on the employer and labor organization, investigate the charge, determine that reasonable cause exists to believe the charge is true, and endeavor to eliminate alleged unlawful employment practices "by informal methods of conference, conciliation, and persuasion."[12] The 1972 amendments to Title VII empowered the commission to sue if it is unable to secure an acceptable conciliation agreement.[13] This provision of the Act has been construed to create an express condition on the commission's power to sue. Consequently, a suit brought by the commission before attempting conciliation is premature. EEOC v. Hickey-Mitchell Co., 507 F.2d 944, 947-48, 8 FEP Cases 1281 (8th Cir. 1974); EEOC v. E. I. DuPont de Nemours & Co., 373 F.Supp. 1321, 1333-34, 7 FEP Cases 759 (D. Del. 1974); EEOC v. Westvaco Corp., 372 F.Supp. 985, 991-93, 7 FEP Cases 589 (D. Md. 1974).[14]

We recently emphasized that the commission's statutory duty to attempt conciliation is among its most essential

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[12] 42 U.S.C. § 2000e-5(b).

[13] 42 U.S.C. § 2000e-5(f)(1).

[14] We have held that the commission's failure to attempt conciliation is not a jurisdictional bar to an employee's action because the employee cannot be charged with the commission's failure to execute its statutory duties. Russell v. American Tobacco Co., ... F.2d ....., ..., 11 FEP Case 395, No. 74-1650 (4th Cir. 1975); Johnson v. Seaboard Air Line R.R., 405 F.2d 645, 1 FEP Cases 450, 69 LRRM 2919 (4th Cir. 1968). These cases, however, are inapposite where the commission's power to sue is in question.

functions.[15] It is particularly important for the commission to attempt conciliation with a union when investigation discloses that provisions of a bargaining agreement concerning seniority and job assignments are causing the alleged unfair employment practices. Then the employees who enjoy majority status are frequently more directly affected than their employer by changes that will advance minority employees. In such cases, the success of conciliation often hinges on the union's response.

We do not rule out the possibility that exceptional circumstances may excuse a failure to attempt conciliation, but that is not the case here. The union's willingness to negotiate even after suit was brought tends to negate any suggestion that timely conciliation of the sex discrimination charges would have been unsuccessful. When it became apparent that the commission's representative lacked authority to settle the case, the possibility of conciliation was dealt a severe blow by the very circumstances Congress sought to avoid—commencement of a civil action before attempting conciliation. Accordingly, we conclude that the district court should have dismissed the part of the commission's complaint which alleges that Local 182 caused the company to discriminate unlawfully on the basis of sex.

[SUPERVISORY APPOINTMENTS]

III. The district court also found that the company had engaged in race and sex discrimination in appointing supervisors. The evidence supports this finding. At both

[15] EEOC v. Raymond Metal Products Co., ... F.2d ....., ..., 12 FEP Cases 38, No. 75-1007 (4th Cir. 1976).

the Richmond and Virginia branches, the entry level position for supervisory personnel is assistant foreman. The company fills about 34 percent of the vacancies in this position by promoting hourly employees; it fills the balance by hiring new applicants. With no formal, objective, written standards for appointment, the company relies in part on recommendations from the union, which also lacks objective standards. Until 1963 the company appointed only white males to supervisory posts, and the enactment of Title VII failed to effect any immediate change in this policy. At the Richmond branch, the first black supervisor was appointed in 1966 and the second in 1971. As of June 1, 1973, there were only three, constituting 9.6 percent of the supervisory force of 31. In 1967 the company named its first female supervisor at the Richmond branch. By 1973 two (6 percent) of the 31 supervisors were women. At the Virginia branch, a black employee was promoted to assistant foreman in 1963. In the next decade four more were appointed, so that by 1973 7.24 percent of the 69 supervisors were black. The first female was not appointed as a supervisor at this branch until 1972. Two more were appointed by June 1, 1973.

Before the trial of the case, neither a black employee nor a woman had ever been appointed to a supervisory position at the Richmond office. The court noted, however, that a vacancy existed, and the company proffered additional evidence that as of November 1, 1974, the Richmond office had one black supervisor and one white female supervisor on a staff of eight.

The district court enjoined the company from "implementing, maintaining, or giving effect to any criteria uti-

lized for the selection of supervisory personnel which is designed to or have the effect of discriminating against black or female candidates for supervisory positions." It ordered the company to post job descriptions for these positions and to devise objective crtieria for selecting new appointees. The propriety of these provisions of the court's decree is well settled. See Brown v. Gaston County Dyeing Machine Co., 457 F.2d 1377, 1383, 4 FEP Cases 514 (4th Cir. 1972); Rowe v. General Motors Corp., 457 F.2d 348, 358-59, 4 FEP Cases 445 (5th Cir. 1972). We think, however, that on remand the court's decree should be enlarged to require the union to publish objective criteria for making its recommendations for supervisory appointments.

[QUOTA REMEDY]

Finally, the district court ordered that vacancies in the assistant foreman, foreman, and office supervisory positions must be filled with qualified blacks and women, except when none can be found, until the percentage of blacks and women equals the percentage of these classes of workers in the Richmond Standard Metropolitan Statistical Area (SMSA). The company's attack on this provision of the decree is two-pronged. First, it contends that Title VII condemns preferential hiring, especially when, as here, the preferences are absolute. It relies primarily on § 703(j) of the Act, 42 U.S.C. § 2000e-2(j), which provides in part:

> "Nothing contained in this subchapter shall be interpreted to require any employer . . . to grant preferential treatment to any individual or to any group because of the race . . . [or] sex . . . of such individual or group on account of an imbalance which may exist with respect to the total number of percentage of persons of any race . . . [or] sex . . . employed . . . in comparison with the total number or percentage of persons of such race . . . [or] sex . . . in any community . . . or in the available work force in any community. . . ."

This section plainly bans the use of preferential hiring to change a company's racial imbalance that cannot be attributed to unlawful discrimination. In Griggs v. Duke Power Co., 401 U.S. 424, 430-31, 3 FEP Cases 175, 177 (1971), the Court said:

> "Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification."

Uniformly, however, Title VII has been construed to authorize district courts to grant preferential relief as a remedy for unlawful discrimination. Rios v. Enterprise Association Steamfitters Local 638 of U.A., 501 F.2d 622, 628-31, 8 FEP Cases 293 (2d Cir. 1974); United States v. N. L. Industries, Inc., 479 F.2d 354, 377, 5 FEP Cases 823 (8th Cir. 1973); Southern Illinois Builders Association v. Ogilvie, 471 F.2d 680, 683-86, 5 FEP Cases 229 (7th Cir. 1972); United States v. Ironworkers Local 86, 443 F.2d 544, 552-53, 3 FEP Cases 496 (9th Cir. 1971); United States v. International Brotherhood of Electrical Workers, Local No.

38, 428 F.2d 144, 149-51, 2 FEP Cases 716 (6th Cir. 1970); Local 53 of International Ass'n of Heat & Frost I. & A. Workers v. Vogler, 407 F.2d 1047, 1053-54, 1 FEP Cases 577, 70 LRRM 2257 (5th Cir. 1969). This construction of the Act is in harmony with other cases which authorize preferential relief from unlawful employment discrimination in situations where Title VII is not applicable. Associated General Contractors of Massachusetts, Inc. v. Altshuler, 490 F.2d 9, 16-18, 6 FEP Cases 1013 (1st Cir. 1973); Carter v. Gallagher, 452 F.2d 315, 330, 4 FEP Cases 121 (8th Cir. 1971); Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 442 F.2d 159, 172, 176-77, 3 FEP Cases 395 (3d Cir. 1971). In all, eight circuits have approved some form of temporary preferential relief for discriminatory employment practices. See Sape, The Use of Numerical Quotas to achieve Integration in Employment, Wm. & Mary L. Rev. 481, 499 (1975). No court of appeals has ruled to the contrary, although there have been dissents.

[KLOSTER CASE]

We have not previously ruled on the issue, but in a case involving the Civil Rights Act of 1866 and the thirteenth and fourteenth amendments, we declined to impose quotas where the district court concluded that adequate relief could be obtained without their use. See Harper v. Kloster, 486 F.2d 1134, 1136, 6 FEP Cases 880 (4th Cir. 1973). In view of the substantial precedent sanctioning preferential relief for unlawful discrimination, we reject the company's argument that Title VII forbids the remedy ordered by the district court. We recognize, however, that cases which approve such remedies caution that the necessity for preferential treatment should be carefully scrutinized and that such relief should be required only when there is a compelling need for it. See Associated General Contractors of Massachusetts, Inc. v. Altshuler, 490 F.2d 9, 17, 6 FEP Cases 1013 (1st Cir. 1973). This brings us to the company's second reason for vacating the decree's provision for preferential appointment of supervisors.

The company argues that its appointment of black and female employees to supervisory positions already exceeds the ratio that preferential relief would require. Its arguments rests on two premises. One, its conduct before the effective date of Title VII does not provide a proper base to measure its compliance with the Act; instead, it must be judged by the manner in which it filled vacancies after this date. Two, the district court erroneously considered the number of blacks and women in the Richmond SMSA workforce as a whole to ascertain a ratio of acceptable performance, instead of using only the blacks and women in the Richmond SMSA supervisory workforce.

We believe these premises are well founded. Title VII is not retroactive.[16] It does not provide a remedy for discrimination which occurred before it became effective in 1965. Robinson v. Lorillard Corp., 444 F.2d 791, 795, 3 FEP Cases 653 (4th Cir. 1971). At the Virginia branch 51 of the supervisors were appointed before Title VII prohibited discrimination in their selection. They should not be counted in determining whether preferential hiring is required now. Between 1965 and 1973 the company appointed 18 assistant

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[16] The legislative history of Title VII indicates that it is not intended to be retroactive. See note 6 supra.

foremen, the entry level position for supervisors. Of that number, five (27.5 percent) were black and three (16.6 percent) were women. At the Richmond branch, 22 of the supervisors were appointed before Title VII became effective and nine afterwards. Of the nine, three (33.3 percent) were black and two (22 percent) were women. At the Richmond office, the evidence is not as clear. It has six entry level supervisory positions, which at the date of trial were filled by five white males with one vacancy. The district court found that four of the six positions had been filled after 1965. Subsequently, the company proffered evidence that it has promoted one black employee and one female to supervisory positions, constituting for each classification 16.6 percent of the appointments since 1965.[17]

The record discloses that 6.8 percent of the blacks and 1.5 percent of the women in the Richmond SMSA are placed in a category that includes supervisory personnel. Those percentages furnish a more realistic measure of the company's conduct than the gross percentage of blacks and women in the whole workforce, including unskilled labor. See Harper v. Mayor, 359 F.Supp. 1187, 1193 n.5, 5 FEP Cases 1050, 1053 (D. Md.), aff'd sub nom. Harper v. Kloster, 486 F.2d 1134, 6 FEP Cases 880 (4th Cir. 1973).

The fact that the company's appointments since 1965

[17] The district court, declined to reopen the record to consider this proffer. Under the ratio that the court used for comparative purposes, the evidence had but slight probative effect. Its import, however, is magnified by acceptance of the company's premise that its performance since 1965 is what must be examined in determining whether it has violated the Act. On remand the court should reexamine the situation at the Richmond office.

exceed the ratio of qualified blacks and women in the workforce does not exonerate the company for the violations of the Act which the district court found. The tardy appointments of blacks and women to supervisory positions long after the passage of Title VII and the present lack of published job descriptions and objective selection procedures fully justify the injunctive relief the district court ordered. We believe, however, that the rate at which the company currently appoints blacks and women to supervisory positions is sufficient to show that there is no compelling need for the imposition of a quota.[18] But see Karst & Horowitz, Affirmative Action and Equal Protection, 60 Va. L. Rev. 955 (1974).

[TIMELINESS OF CHARGE]

IV. The Company contends that the charge filed with the EEOC on January 3, 1969, was not timely because there were no discriminatory practices at either branch after January 15, 1968. It argues that for this reason the action should be dismissed for failure to meet the jurisdictional requirement of a timely charge.[19] The district court, how-

[18] We do not mean to suggest that the company may use its percentage of black and female supervisors as a defense to future charges of discrimination against blacks and women. It must consider each application on its merits. If the company discriminates against a black or a woman, it can be called to account for violating Title VII, regardless of the percentage of blacks and women among its supervisors.

[19] Before the 1972 amendments to Title VII, a charge had to be filed with the EEOC within 90 days of the alleged unlawful employment practice. 42 U.S.C. § 2000e-5(d) (1964). In 1972, this period was changed to 180 days. 42 U.S.C. § 2000e-5(e).

ever, found that the discrimination was of a continuing nature and properly held that the charge was timely. Williams v. Norfolk & Western Ry., —— F.2d ——, 11 FEP Cases 836, No. 74-1549 (4th Cir. 1975); Macklin v. Spector Freight Systems, Inc., 478 F.2d 979, 994, 5 FEP Cases 994 (D.C. Cir. 1973); see Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 467 n.13, 10 FEP Cases 817 (1975) (dictum).

The district court ruled that the filing of the charge in 1969 did not toll the statute of limitations for the § 1981 action which was filed in 1973. The Supreme Court recently confirmed the district court's correct understanding of the law. Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 10 FEP Cases 817 (1975).

The district court applied the Virginia five-year statute of limitations to the § 1981 action. We have ruled, however, that the state's two-year statute applies to § 1982 actions. Allen v. Gifford, 462 F.2d 615 (4th Cir. 1972). Both § 1981 and § 1982 were enacted to redress infringements of closely related civil rights. We conclude, therefore, that the same two-year statute should apply to § 1981 actions. Accord, Revere v. Tidewater Telephone Co., No. 73-1390, [6 FEP Cases 891] (4th Cir. October 2, 1973) (unpublished opinion applying the two-year statute to a § 1981 action); cf. Almond v. Kent, 459 F.2d 200 (4th Cir. 1972). Accordingly, on remand, the two-year statute of limitations should be applied to the § 1981 claim. Of course, the point has little practical significance in this case in view of the fact that the § 1981 action was not tolled by the filing of the charge with the EEOC.

[BACK-PAY PERIOD]

The district Court ruled that back pay for sex discrimination should accrue from April 8, 1967, two years before the charge was filed with the EEOC. The two-year period mentioned by the district judge conforms with the statute.[20] However, this charge did not allege discrimination against women. Instead, this type of discrimination was initially disclosed by the EEOC's investigation.[21] Dealing with similar circumstances, we held in EEOC v. General Electric Co., —— F.2d ——, 12 FEP Cases 21, No. 74-1974, slip op. at 34-36 (4th Cir. 1975), that in the absence of countervailing equities a trial court should limit back pay to two years before the employer received notice of the results of the investigation. On remand the district court should reconsider its decree in light of this case.

The judgment is affirmed in part and modified in part, and the case is remanded for further proceedings consistent with this opinion.

Concurring and Dissenting Opinion

WIDENER, Circuit Judge, concurring and dissenting:—I concur in large part with the opinion of the court for the reasons stated in the opinion. I differ, however, in some respects, and as to those I respectfully dissent.

So far as the opinion is based on EEOC v. General Electric Company, 12 FEP Cases 21, No. 74-1974 (4th Cir. 1975), I dissent for the reasons set forth in my dissent in that case, our judgment in which is not yet final. I should say, how-

---

[20] 42 U.S.C. § 2000e-5(g).

[21] See Part II supra.

ever, that this case may be a somewhat closer one than General Electric because here, at least, sex discrimination was the subject of the EEOC complaint, while in General Electric it was not. This case points up the importance of requiring the EEOC to comply with its own regulations as well as the statute. The union here is excused from liability for discrimination on account of sex because the statute was not complied with. The reason especially emphasized and held is that ". . . a suit brought by the commission before attempting conciliation is premature," p. 31, because ". . . the commission's statutory duty to attempt conciliation is among its most essential functions." p. 32. Despite the fact that both the company and the union were deprived of the first conciliation step as set forth in 29 CFR § 1601. 19a, as well as the statutory benefits of conciliation attempts, the company is held to liability, while the union is not, although the liability was caused by the collective bargaining agreement signed by both the company and the union. Thus, I dissent not only from the finding against the company, but also from the disparate treatment awarded the company and the union on facts which are indistinguishable.

[BARGAINING EVIDENCE]

While the subject of collective bargaining agreements is at hand, I should say I have grave reservations about considering evidence in this type case of the respective positions leading up to collective bargaining agreements when the agreement results in unlawful discrimination. This is tantamount to allowing a good faith defense disapproved by us in Moody v. Albemarle Paper Company, 474, F.2d 134, 5 FEP Cases 613 (4th Cir. 1973). (Modified on other

grounds, 422 U.S. 405, 10 FEP Cases 1181 (1975).

The district court had only this to say about damages:

> "The formulation of the method of calculation and distribution of the back pay award and adjustment to the pension and profit-sharing plans will be complex—sufficiently so as to tax the ingenuity and good faith of counsel. In this regard counsel are directed to confer with a view to agreeing on a plan of calculation and distribution of the back pay award for submission to the Court—and, indeed, to explore the possibility of settling the monetary aspects of the case." App. p. 42.

With the opinion of the district court in mind, it is seen that the method of computing damages was not considered by that court and is not properly before this court, McGowan v. Gillenwater, 429 F.2d 586 (4th Cir. 1970), so the detailed discussion of that subject is a dictum. If the district court, in ascertaining damages, adopts standards with which either side is in disagreement, either is at perfect liberty to appeal the award. Taking up the matter now, and especially its treatment in detail, when the matter is so "complex" as to "tax the ingenuity and good faith of counsel," and upon no record, is too great a departure from what I conceive to be the proper rule of courts expressing opinions only with references to existing controversies. There is no controversy at this time between the parties about this matter, and an expression of opinion I think beyond the legitimate function of an appellate court. I express no opinion as to the correctness of the dictum.

[QUOTAS]

We hold that the imposition of quotas for supervisory positions is error because the "rate at which the company

currently appoints blacks and women to supervisory positions is sufficient to show that there is no compelling need for the imposition of a quota," and, then, in note 18, explain that the maintenance of a quota is not a defense to a charge of racial or sexual discrimination. In view of our holding and note 18 just referred to, I think we go out of our way just earlier in the opinion to justify the imposition of quotas in hypothetical cases.

Since quotas themselves are the rankest kind of discrimination and their application, if valid in any context, requires exaggerated facts not present here, that general subject would be better left for another day.

Senator Clark, one of the sponsors of the statute and one of the Senate floor managers, filed, in Legislative History, 3014, in response to objections made by opponents of the legislation, a series of answers to the objections, among them the following (p. 3015):

> "Objection: The bill would require employers to establish quotas for nonwhites in proportion to the percentage of nonwhites in the labor market area.
>
> "Answer: Quotas are themselves discriminatory."

In view of the fact that the very existence of a quota is constitutionally suspect, the just quoted legislative interpretation of the statute, and our holding, such justification in hypothetical cases I think is out of place.

Supreme Court, U. S.
FILED
OCT 29 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. ...75-6361

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

APPENDIX TO PETITION FOR CERTIORARI

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OPINION
Of the United States Court of Appeals for the Fifth Circuit;
August 8, 1975, 517 F.2d 299

No. 73-2214.

United States Court of Appeals, Fifth Circuit.

Aug. 8, 1975.

UNITED STATES of America, Plaintiff-Appellant-Cross Appellee,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Defendant-Appellant-Appellee.
UNITED STATES of America, Plaintiff-Appellant-Cross-Appellee,

v.

T.I.M.E. FREIGHT, INC., et al.,
Defendants-Appellees-Cross Appellants,

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,
Defendant-Appellant-Appellee.

* * * * * * *

Appeals from the United States District Court for the Northern District of Texas.

Before BROWN, Chief Judge, and AINSWORTH and MORGAN, Circuit Judges.

JOHN R. BROWN, Chief Judge:

This governmental pattern and practice suit is one more in an ever-increasing number of Title VII employment discrimi-

nation cases arising out of the trucking industry and primarily involving the past exclusion of minority group members from the job of over-the-road-line driver (LD).[1] The Government, T.I.M.E.-D.C., Inc. and the International Brotherhood of Teamsters (IBT) all appeal from an order and decree that found that T.I.M.E.-D.C. has engaged in a system-wide pattern and practice of discrimination in violation of §§ 703(a)(1), (2)[2] and 707(a)[3] of Title VII of the Civil Rights Act of 1964. This

[1] Three very recent cases are Rodriguez v. East Texas Motor Freight, 5 Cir., 1974, 505 F.2d 40; Herrera v. Yellow Freight System, Inc., 5 Cir., 1974, 505 F.2d 66; and Resendis v. Lee Way Motor Freight, Inc., 5 Cir., 1974, 505 F.2d 69, which were preceded by Franks v. Bowman Transportation Company, 5 Cir., 1974, 495 F.2d 398; Bing v. Roadway Express, Inc., 5 Cir., 1971, 444 F.2d 687 (Bing I); Belt v. Johnson Motor Lines, Inc., 5 Cir., 1972, 458 F.2d 443; Witherspoon v. Mercury Freight Lines, 5 Cir., 1972, 457 F.2d 496; United States v. Roadway Express, Inc., 6 Cir., 1972, 457 F.2d 854; Jones v. Lee Way Motor Freight, 10 Cir., 1970, 431 F.2d 245, cert. denied, 1970, 401 U.S. 954, 91 S.Ct. 972, 28 L.Ed. 2d 237; United States v. Central Motor Lines, W.D.N.C., 1971, 338 F.Supp. 532, 352 F.Supp. 1253; United States v. Pilot Freight Carriers, Inc., M.D.N.C., 1973, 54 F.R.D. 519; United States v. Navajo Freight Lines, Inc., C.D.Cal., 1973, 6 FEP Cases 274 and 1972, 4 FEP Cases 1044; Sagers v. Yellow Freight System, Inc., N.D.Ga., 1973, 5 EPD ¶ 8885, 5753; Sabala v. Western Gillette, Inc., S.D. Tex. 1973, 362 F.Supp. 1142.

[2] 42 U.S.C.A. § 2000e-2(a)

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

[3] 42 U.S.C.A. § 2000e-6

Civil actions by the Attorney General—Complaint

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

appeal is largely focused on the issues of whether the Government carried its burden of proving pattern and practice, and if so, whether the District Court's award of carry-over seniority relief to the affected class of Black and Spanish-surnamed American (SSA) incumbent employees was appropriate, adequate or both.

This litigation represents the culmination of the consolidation of two separate suits filed by the United States against T.I.M.E.-D.C. and the Teamsters.[4] The first was filed on May 15, 1968 in the Middle District of Tennessee, alleging that T.I.M.E. Freight, Inc. (a predecessor of T.I.M.E.-D.C., Inc., see table, note 6, *infra*), the IBT, and Teamster Local 480 (representing T.I.M.E. Freight employees at the Nashville terminal) were engaged in a pattern and practice of discrimination in violation of Title VII at T.I.M.E.'s Nashville terminal.

The second suit was filed January 14, 1971 in the Northern District of Texas, charging T.I.M.E.-D.C. and IBT with engaging in a pattern and practice of discrimination on a systemwide basis. The International Association of Machinists and Aerospace Workers was subsequently joined as a defendant. After transfer the suits were consolidated in the Northern District of Texas on April 30, 1971.

[4] Reference is made interchangeably to IBT and Teamsters unless otherwise indicated by the context.

The Government's Claim

Essentially the Government charged T.I.M.E.-D.C. with engaging in a pattern and practice of discrimination by

(a) Refusing to recruit, hire, transfer and promote black and Spanish-surnamed persons on an equal basis with whites.

(b) Assigning blacks and Spanish-surnamed persons to lower paying, less desirable job classifications while reserving the higher paying, more desirable classifications for whites.

(c) Refusing to employ black and Spanish-surnamed persons as casuals (non-regular) employees on the same basis as whites.

(d) Refusing to promote or transfer black and Spanish-surnamed employees, or to provide an opportunity for such employees to transfer, to road driver, mechanic and managerial jobs on the same basis it has promoted, transferred and provided the opportunity to transfer for white employees to these jobs.

(e) Maintaining a system of promotions and transfers which perpetuates the effects of the company's past discrimination against black and Spanish-surnamed persons.

Pretrial Order ¶ 2.

The Government also alleged that IBT by itself and through its Area Conferences[5] and locals engaged in a pattern and practice of discrimination by entering into contracts which perpetuate the effects of past discrimination by impeding the transfer

[5] The Southern Area Conference covers those terminals within the states of Alabama, Florida, Georgia, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma and Texas. Seven terminals for which the United States seeks class relief are within the Southern Area Conference. *See* Rodriguez, *supra*, at 47.

of Blacks and SSAs to more desirable jobs and by failing to take affirmative action to correct continuing effects of past discrimination.

Although the Government alleged and offered proof on a wide variety of discriminatory practices, its main complaint centered on the charge that T.I.M.E.-D.C. and its predecessors had refused to initially hire Blacks and SSAs as LDs and continued to perpetuate that discrimination by refusing to permit or discouraging them to transfer to LD vacancies.

T.I.M.E.-D.C.'s Operations

T.I.M.E.-D.C. Inc. is a major interstate common carrier operating on a transcontinental basis, with headquarters in Lubbock, Texas. T.I.M.E.-D.C. operates 51 terminals in 26 states and three Canadian provinces and employs 6,472 people. T.I.M.E.-D.C. nationwide motor freight system is a product of 10 mergers over a 17 year period.[6]

[6] Merger History

10/52	Southwestern Freight Lines, Inc.	merged	into	Intercity Motor Express forming T.I.M.E., Inc.		
9/54	Harrington Truck Lines	"	"	T.I.M.E., Inc.		
5/57	Southeastern Truck Lines	"	"	"	"	
10/59	Powell Brothers Truck Lines	"	"	"	"	
6/64	Super Service Motor Freight	"	"	T.I.M.E. Freight, Inc.*		
4/67	Constructors Transport Co.	"	"	"	"	"
4/68	A portion of the operations of Texas-Arizona Motor Freight	was acquired by		"	"	"
1/69	Los Angeles-Seattle Motor Express (LASME)** and Denver-Chicago Trucking Co. (DC)***	merged into T.I.M.E. Freight, Inc. forming T.I.M.E. D.C., Inc.				

* T.I.M.E., Inc. was changed to T.I.M.E. Freight, Inc. in

** LASME was formed in 1932 in Seattle as Hendricks Refrigerated Express and served points between Vancouver and Los Angeles as of the date of the merger.

*** D.C. was formed in Denver in 1930 as Cohen Brothers Trucking and developed into a transcontinental carrier through a series of 12 mergers.

IBT is an unincorporated labor organization. T.I.M.E.-D.C. has signed a total of 124 separate collective bargaining agreements with 83 individual Teamster locals at its various terminals. Each contract consists of three basic parts, the National Master Freight Agreement, an Area Supplement and Local Riders or Addenda. The National Master and the Area Supplements are negotiated nationally on a multi-union, multi-employer basis. *See* Rodriguez, *supra*, at 47 and 60.

Job Classifications and Seniority System

Non-managerial employees of T.I.M.E.-D.C. represented by IBT are divided into four basic bargaining units—road (LD), city, garage, and clerical[7]—each with its own separate contract.

The four basic bargaining units each operate under a separate local rider and area supplement although all are covered by the National Master Freight Agreement. Accordingly each maintains its separate seniority roster.

There are generally no lines of progression within the garage. When a vacancy occurs notice is posted and any member of the unit capable of meeting the minimum qualifications for the job may bid on the basis of seniority. The same is essentially true of the city. There is no line of progression and any member of the unit may bid on the basis of seniority on any job within the unit when a vacancy arises, if the employee meets the minimum qualifications.

LD is the only job classification within the line unit. All drivers within the unit are placed on the seniority board. Unit

[7] The drivers in the city operations unit pick up freight at the terminal and deliver it locally. They must necessarily drive in congested city traffic and engage in a great deal of loading and unloading. Those in the road unit (LDs) drive tractor-trailers over the road between the company's terminals in various cities. They do not load or unload their trailers.

seniority controls the bidding on particular line runs, overtime and protection against layoffs, as well as transfer preference within the Southern Conference under the Modified Seniority Plan. (See text accompanying note 9, *infra*). A new LD with low seniority is required to "sweat" the extra board awaiting extra line runs as they arise. As he accumulates seniority he may bid on and obtain the less desirable regular line runs, looking eventually to the day he will have accumulated enough seniority to qualify for the most desirable regular runs.

Nothing in the union contracts prohibits an employee from transferring between separate bargaining units at a given terminal, but he loses his pre-transfer accumulated seniority for bid and layoff.[8]

While city drivers have occasionally and at some terminals frequently transferred to LD, it was a more normal practice for the terminal to hire many of its LDs "off the street."

Ordinarily an employee would not be allowed to transfer from one terminal to another and take his seniority with him. However those terminals within the Southern Conference have adopted a "Modified Seniority System" under which a LD domiciled within the Southern Conference who has been laid off at his home terminal is permitted to use his unit seniority to either fill a vacancy at another terminal within the South-

[8] The parties stipulated:

> 15. If a regularly employed employee not on layoff moves to a job covered by one collective bargaining agreement from a job covered by another collective bargaining agreement at one of T.I.M.E. D.C.'s terminals, it is the uniform policy and practice, in every known instance, that such employee establishes his seniority for purposes of bidding and layoff in the job he transfers to as of the date of the transfer and gives up such seniority for purposes of bidding and layoff in his old job as of that date; however, he maintains his company seniority for purposes of fringe benefits, such as vacation rights.

Pretrial Order ¶ 15.

ern Conference or bump a junior LD at such other terminal. Such transfer right must be utilized within 30 days of the layoff. The transferring LD then has the option to return to his old terminal prior to new hirees when a vacancy arises.[9]

Proceedings Below

The consolidated litigation was tried in the Northern District of Texas in early May 1972. All parties introduced live testimony including that of many alleged discriminatees, supervisory and management personnel of T.I.M.E.-D.C., teamster officers, and various experts, including a government statistician and a social psychologist who testified for T.I.M.E.-D.C. In addition the Government introduced over 80 depositions and 19 summaries of depositions taken at 10 of T.I.M.E.'s terminals.

---

[9] In regard to the precise operation of Southern Conference Modified Seniority, the parties stipulated:

> 18. The provisions of modified system seniority as provided in the Southern Conference Area Over-The-Road Supplemental Agreement are as follows:
>
> a. The Employer will prepare a seniority roster for all Road Drivers who have seniority under the Road Agreement showing the drivers' full company seniority.
>
> b. Drivers will use company seniority for all purposes at home terminal, but may only move to a foreign terminal when laid off due to reduction in force at home terminal, or at the closing of a domicile point, or in the event of a new point of domicile or as approved by Change of Operation Committee.
>
> c. When a driver has been laid off, he will have a thirty (30) day period in which to exercise his seniority at some other terminal at his option.
>
> d. A driver wishing to exercise his seniority due to lay-off, will give advance notice to the terminal manager of the other station; which notice shall be posted on the bulletin board for a forty-eight (48) hour period before a bump is effective.
>
> e. Drivers who have been laid off from their original point of domicile and who have exercised their seniority at some other terminal shall be offered an opportunity to return to that point before new employees are hired.
>
> f. Drivers on lay-off who have not exercised their seniority at some other terminal shall be recalled for work in accordance with the Road Agreement. However, if recall is to a foreign terminal he will have the option of turning down the recall and thereafter, he will be entitled to recall at his home terminal only.
>
> g. Any employees of a company who under the terms of the 1970-73 Contract have voted to have Southern Conference Modified Seniority who did not already have Southern Conference Modified Seniority, and who are on lay-off and who have not had an opportunity to exercise their seniority into the other area will have a thirty (30) day period from the date of the adoption of these rules in which to exercise their seniority over any junior employee in the other area. The thirty (30) day period shall commence September 21, 1970.
>
> h. An employer shall not lay off an employee if the employee averages $150.00 per week for thirty (30) days except as provided in Artiicle 5, Section 4 of the National Master etc. contract, or for a provable economic lay-off.
>
> Pretrial Order ¶ 18.

(1.) Decree in Partial Resolution of the Suit

Following the trial but before decision, the Government and T.I.M.E.-D.C. entered into a Decree in Partial Resolution of the suit. It stated that it was neither an adjudication on the merits nor an admission by T.I.M.E. of a Title VII violation. It dealt largely with the matter of applicants for new hires. Under the decree T.I.M.E.-D.C. agreed (i) to engage in a minority recruitment program in all communities where it operates terminals in cooperation with community organizations, (ii) to provide all minority applicants who inquire about employment with an application blank and notification of any vacancies, (iii) to keep specific employment records and file periodic reports with the District Court, and

(iv) to abide by certain job qualification standards with respect to future hiring and promotion.[10]

Of greater significance to the issues on appeal, the decree mandated priority to discriminatees and subsequently a one-to-one minority-white hiring ratio.[11]

---

[10] With respect to driving positions to decree provided

Qualifications for Employment

5. The qualifications for city driving and road driving positions shall be those set forth in the Department of Transportation's Motor Carrier Safety Regulations. Title 49, Part 391, Sections 391.11 and 391.15. No black or Spanish-surnamed American applicant for a road driving position who meets these qualifications shall be deemed insufficiently experienced for that position if he has the equivalent of two years experience driving equipment comparable to that to be operated on the job. In determining equivalence, T.I.M.E. D.C. shall consider such factors as military driving experience and graduation from a truck driving school.

* * * * * * *

12. T.I.M.E. D.C. may continue to give the Department of Transportation written safety test to all applicants; however, passing the test shall not be a qualification for employment unless the Department of Transportation revises its Motor Carrier Safety Regulations, Title 49, Part 391, to so provide.

[11] It prescribed the following procedure for filling future vacancies at the T.I.M.E.-D.C. terminals involved:

13. All job vacancies at T.I.M.E. D.C. terminals and other facilities at which it employs personnel shall be filled in the following sequence:

(a) By those persons who may be found by the Court, if any, to be individual or class discriminatees suffering the present effects of past discrimination because of race or national origin prohibited by Title VII of the Civil Rights Act of 1964.

Paragraph 13(a) was expressly adopted in the Court's Final Order, so it became an adjudicative, not just a consent, decree. It further provided that after all individuals covered by ¶ 13(a) have been offered an opportunity to qualify for a LD vacancy at one of the terminals, T.I.M.E. D.C. must then fill future vacancies on a one-to-one minority to white hiring ratio until the terminal reaches the ratio of minority to white employees approximate to that of the city or metropolitan area in which the terminal is located.

Finally T.I.M.E.-D.C. agreed to pay $89,500.00 in full settlement of its "alleged obligation" to individual and class discriminatees as found by the District Court. The decree provided for a maximum award of $1,500.00 to any individual discriminatee, and any award of monetary compensation would be conditioned on a signed release of any right to future compensation arising out of past discrimination covered by the litigation.

(2.) The Court's Adjudicative Order and Decree

The Court was then left with the task of determining whether there was a pattern and practice, and if so, which employees were "individual or class discriminatees suffering the present effects of past discrimination" within the meaning of ¶ 13(a) of the Consent Decree (see note 11, *supra*) and thereby entitled to transfer preference and seniority relief.

Pattern and Practice of Discrimination. The Court reviewed the Government's proof including its statistical evidence which consisted of tables showing the ratio of Blacks to Whites in each Standard Metropolitan Statistical Area (SMSA) and in each T.I.M.E.-D.C. terminal city compared with the ratio of black to white employees at that terminal,[12] and at selected major metropolitan terminals the numerical breakdown by race of each job classification.[13]

---

[12] SMSA is a census bureal term of art. The Government statictics were based on the 1970 United States Census of Population Reports. Background information concerning the compilation of the Government exhibit and the underlying data was provided by a Justice Department statistician who testified at trial. T.I.M.E.-D.C. attacks the reliability and probative values of these comparative statistics.

[13] The Government tabulated comparative employment statistics for the 11 terminals at which it took depositions. The statistics were culled from a computer printout of T.I.M.E.-D.C.'s employment records which was introduced into evidence at trial. Therefore the complete comparative racial breakdown at all T.I.M.E.-D.C. terminals was a matter of record and easily computable.

The Court concluded on the statistics and live testimony of many witnesses that T.I.M.E.-D.C. has not hired minorities in proportion to their numbers in the various terminals and has not allowed minorities to engage in the choice jobs at the terminals such as LD. In addition, the Court stated that the union contracts while neutral on their face "operate to impede the free transfer of minority groups."

Having found a pattern and practice of discrimination the Court then turned to the question of remedy. Following trial the Government, responding to the Court's request, submitted a list of "Individuals for whom the Plaintiff Seeks Relief" categorizing as an "affected class" of discriminatees those incumbent employees[14] at T.I.M.E.-D.C. terminals that maintained a LD domicile prior to 1969—the approximate date at which T.I.M.E.-D.C. actively began hiring minority group members as LDs.[15]

Intra-Discriminatee Priorities and Seniority Dates. On the basis of the evidence submitted by the Government and to some degree countered by the defendants the Court divided the affected class into three groups (referred to as App. A, B, C).

App. A comprised 30 individuals[16] all of whom the District Court concluded "have suffered severe injury because of

---

[14] One major exception to the basic definition of the affected class was a group of white employees at the Memphis terminal who were hired into city operations prior to August 8, 1958—the date on which the terminal ceased allowing city drivers to transfer to LD in order to keep Black city drivers from so transferring.

[15] Only 20 of T.I.M.E.-D.C.'s 51 terminals were thus included within the Government's request for individual relief.

[16] Of the thirty, twenty had either applied initially for the position of LD or had attempted to transfer from city operations to LD and had been turned down. Six were maintenance servicemen at the Nashville terminal discriminatorily denied training needed to advance within the garage. The remaining three had been the subjects of various other forms of discriminatory treatment.

the practice and plan of discrimination by T.I.M.E. These individuals produced the most convincing evidence of discrimination and harm resulting therefrom."

The Court placed four individuals in App. B because "The evidence regarding these individuals is not sufficient to show clear and convincing specific instances of discrimination or harm resulting therefrom. The evidence does show, however, that these individuals were very possibly the objects of discrimination and that they were likely harmed by such discrimination."

Finally, the Court placed the three hundred plus remaining individuals in App. C since they "either presented no evidence of discrimination against themselves and resulting harm or are no longer in the employ of TIME. As mentioned above, all are members of a class of discriminatees; however, this Court has no evidence to show that these individuals were either harmed or not harmed individually by the discrimination to the class as a whole."

A number of other provisions were significant:

In order to effectuate ¶ 13(a) (see note 11, *supra*) the Court provided that T.I.M.E.-D.C. within a specified period would send notice by certified mail to all in App. A, B and C, informing them of their right to preference on future vacancies at their terminal and of the necessity of affirmatively responding within 60 days if interested.[17] The Court then prescribed specific successively reduced bidding priorities for App. A, B and C and seniority dates on future vacancies[18] as well as a number of other provisions.

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[17] Further, failure to respond to T.I.M.E.-D.C.'s notice or failure to accept an opportunity to transfer would be a waiver of the company's obligation to the discriminatee.

[18] For *App. A*: those affirmatively responding to the notice would be notified when future vacancies arose at their home terminal in the

The Court carefully restricted the relief to future vacancies and then determined that a position would not be considered vacant if there was a seniority roster employee on layoff unless the layoff had been in existence for a period of greater than three years. Otherwise, the laid off employee would be given a preference to bid on openings prior to and without competition from the members of the affected class. (See, e. g., note 44, *infra*).

Under the order, transferring members of the affected class had to meet all objective requirements of the new job. And as to driving jobs, the Court specified that members of the affected class would be allowed to demonstrate their driving skill after they familiarize themselves with company equipment. Any such person who failed the T.I.M.E.-D.C. driving test would be permitted to retake it before a neutral examiner.

Transferring discriminatees would be allowed a 30 day probationary period during which they could return to their old job with no seniority loss in the event they were not satisfied with the new job or were unable to qualify.

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order of terminal seniority which, if the applicant qualified, could be carried bacw to July 2, 1965 (the effective date of Title VII), over into the new position regardless of whether it was in a separate bargaining unit governed by a separate contract.

(ii) For *App. B*: after App. A members responding affirmatively to the T.I.M.E.-D.C.'s initial notice have all been offered an opportunity to bid on the position from which they had been excluded at their home terminal, T.I.M.E-D.C. would then offer an opportunity to bid on vacancies to those in App. B employed at that particular terminal with seniority carryback to January 14, 1971 (the filing of the systemwide pattern and practice suit in the Northern District of Texas).

(iii) For *App. C*: on exhaustion of App. B, a terminal would then offer the opportunity to bid on future vacancies to those of App. C at that terminal. Successful transferees of App. C would carry no accumulated seniority into the new unit but would merely have the opportunity to bid on the vacancy before persons not members of the class and the general public.

The Court also found it necessary to alter the Modified Seniority System of the Southern Area Conference (see n. 9, *supra* and pp. 42-43, *infra*). While laid off LDs at Southern Conference terminals would still be allowed to bump junior drivers at other terminals where no vacancy existed at the other terminal, if a vacancy did exist members of the affected class would be permitted to compete with the transferring LD on the basis of employment seniority. Furthermore within the Southern Conference, members of the affected class granted bidding priority on the position of LD would be permitted to bid on LD vacancies at other terminals on the basis of their seniority. However, members of the affected class domiciled at that terminal would still receive first preference to bid on the L.D. position.

The Court also specifically tailored relief to cover miscellaneous and unique circumstances at individual terminals.[19] T.I.M.E.-D.C. was required to keep extensive records and make periodic reports to the Court. And both T.I.M.E.-D.C. and IBT were enjoined from "engaging in any act or practice * * * which has the purpose or effect of discrimination * * *".

The Court retained jurisdiction and ordered a stay of the App. C relief pending appeal. None are happy and all appeal—T.I.M.E.-D.C. and IBT on the ground that the record does not

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[19] For instance it ordered that the Memphis terminal had complied with the mandate of App. C in vew of the fact that as of 1969 it had permitted members of city operations to transfer to LD, taking with them company seniority for fringe benefit purposes.

It also ordered the Nashville terminal to provide adequate training for the black garage servicemen who had previously been discriminatorily denied such training.

In view of the merged seniority rosters at T.I.M.E.-D.C.'s two Los Angeles terminals (Vernon and Montibello) discriminatees at either would be allowed to bid on vacancies at the other reserving a preference for discriminatees at their own terminal however.

support the finding of pattern and practice and that the relief, especially to App. C is inappropriate. IBT and T.I.M.E-D.C. assert that the locals were indispensable parties.

The Government, on the other hand, supporting the finding of pattern and practice, attacks the remedy in several respects. The principal attack is centered on the Court's limiting effective bidding rights to the 30 individuals in App. A to the detriment of the few in App. B, and to the flagrant discrimination of the 300 plus discriminatees in App. C. Intertwined with this is the attack on the seniority carry-back for those in App. A to July 2, 1965, the effective date of the Act, to January 14, 1971 for App. B, the date of filing of the District Court suit and to the date, if ever, each transfer into the specified better job for the hundreds in App. C. Complaint is also made of the provision requiring a layoff to continue for three years before a "vacancy" exists for which those in App. A, B and C have successively reduced transfer rights. Finally, the Government objects to the use of an employer-union qualification committee at Nashville and the failure to grant effective transfer rights to Memphis city drivers[20] hired prior to August 8, 1958.

Indispensable Parties

[1] We must determine whether Teamster locals representing T.I.M.E.-D.C. employees were indispensable parties to this litigation. We conclude that the District Court correctly ruled that they were not.

Under F.R.Civ.P. 19(a) the Court must determine whether a party should be joined "if feasible." Since the remedy in issue in this litigation will have some effect on the bargaining agreements to which the local unions are parties, it would no doubt be proper to join them as parties to the litigation. Since, however, they are scattered across the country, the trial court could conclude that it is not feasible to join them.

[20] These are included in App. C.

Under 19(b) where joinder is not feasible the Court must determine whether "in equity and good conscience" the action should proceed in the absence of the parties in issue or whether it should be dismissed. The District Court was warranted in holding that the litigation could properly proceed in the absence of the various Teamster locals.

Of great significance to the determination to proceed in the absence of the Teamster locals is the major role played by the International both in the process of contract negotiation and in all phases of this litigation. Teamster contracts are negotiated every three years on a nationwide, multi-union, multi-employer basis with each individual local giving the National Over-The-Road and City Cartage Policy and Negotiating Committee a power of attorney to negotiate on its behalf.[21]

While the National Master Freight and applicable Area Supplement will be included in the contract which the local eventually signs with the employer, both the national and area contracts are subject to acceptance by a nationwide majority vote of Teamsters, thus the members of an individual local will be bound by its provisions even if the majority of the members of the particular local votes to reject it. The process of negotiation shows that the individual locals play little if any role in the actual negotiation of the contracts which control Teamsters' seniority rights and further, that officers of the International are in a position to play a major role in that negotiation.

On the basis of these circumstances other courts which have been faced with the same issue in Title VII litigation in the trucking industry have also concluded that where the Interna-

[21] See Rodriguez, *supra*, at 60, for a more detailed description of the contract negotiating process.

tional is a party to the litigation, the individual locals will not be regarded as indispensable.[22]

Finally, the basic seniority issue in this case—whether a discriminatee should be allowed to transfer from city operations to LD (and thus from one contract to another) with full carryover terminal seniority—is neither specifically prohibited nor even addressed by the contracts before the Court, and certainly not that of local supplements. See *Pilot Freight, supra,* 54 F.R.D. at 521-22.

In view of all the circumstances we conclude that both below and here the International more than adequately represents and defends the seniority status of its members and that adequate and effective relief may be granted without unduly prejudicing the absent local unions, since they too are under the law and cannot shield continued discrimination by contract terms.

Pattern and Practice[23]

Graphic statistics led the District Court to conclude that minorities have simply been denied access to the more desirable job of LD. As of March 31, 1971, T.I.M.E.-D.C. had approximately 6,472 employees. Of those, 314 (5%) were Black and 257 (4%) were Spanish-surnamed American. A large majority of the Black and SSA employees were assigned to city operation (city driver, dockman, hostler) or serviceman (including tireman) jobs. Of the Black employees, 260 or 83% were in such jobs. Of the SSA employees, 199 or 78% were in such jobs.

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[22] *Pilot Freight, supra,* 54 F.R.D. at 522; *Navajo Freight, supra,* 4 FEP cases at 1045; *see also* United States v. Roadway Express, *supra,* at 857. *Cf.* Sabala v. Western Gillette, *supra,* 1153-55.

[23] Although T.I.M.E.-D.C. operates 51 terminals, principal relief for minority members was sought for those employed at the following 20 terminals where line drivers were domiciled prior to 1969—the

In contrast to this, of the 1,828 LDs as of March 31, 1971, only 8 (or 0.4%) were Black and only 5 (or 0.3%) were SSAs. None of the eight Blacks were employed as a line driver until 1969, even though the Government's Title VII suit with respect to the Nashville terminal had been filed on May 15, 1968. Of the

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approximate date when T.I.M.E.-D.C. began hiring and promoting minority members to LD:

T.I.M.E.-D.C. Terminals at Which the United States Seeks Class Relief

Terminals Where Depositions Taken

Terminal	Prior System & Date of Merger Into T.I.M.E.	Teamsters Area Conference
Vernon(L.A.)	SW 52 OCA 54 C 67 DC 69	W
Oklahoma City	OCA 54	S
Memphis	SE 57	S
Atlanta	SE 57	S
Chicago	SS 64 DC 69	C
Nashville	SE 57 SS 64	S
Irving	TA 68	S
San Antonio	TA 68	S
Montebello(L.A.)	Lasme 69	W
Hayward(S.F.)	C 67 Lasme 69	W
Denver	DC 69	W

Key
Ic—Intercity Motor Express
T—T.I.M.E., Inc.
SW—Southwestern Truck Lines
OCA—Oklahoma City Authority
H—Harrington Truck Lines
SE—Southeastern Truck Lines
S—Southern Area Conference
W—Western Area Conference
C—Central Area Conference

eight Black LDs, three were transferred city drivers at Memphis, two in 1969 and one in 1970; of the other five, one was hired in Evansville, Indiana in 1969 and the others were hired in Cincinnati, St. Louis and Oklahoma City in 1970. Of the five SSA LDs, three were employed at El Paso, 1950, 1966 and 1969 respectively, and two were employed at Los Angeles in 1963. So glaring was the situation that with the exception of one Black who worked as a LD at the Chicago terminal from 1950 to 1959, there is no evidence that a single Black was

Terminal	Others Prior System & Date of Merger Into T.I.M.E.	Teamsters Area Conference
Lubbock	Ic 48 OCA 54	S
Phoenix	SW 52 DC 69	W
St. Louis	SE 57 PB 59 SS 64 DC 69	C
Paris	SE 57	S
Chattanooga	SE 57	S
Cincinnati	"	C
Kansas City	PB 59 DC 69	C
Knoxville	SS 64	S
Seattle	Lasme 69 DC 69	W
Portland	Lasme 69 DC 69	W

Key PB—Powell Brothers Truck Lines
SS—Sup. Service Motor Freight, Inc.
C—Constructors Transport Co.
Lasme—Los-Angeles-Seattle Motor Express
DC—DC International

ever employed on a regular basis as LD by T.I.M.E.-D.C. or any of its predecessor companies prior to 1969.[24]

Similar facts were starkly revealed as to minority discrimination at the Nashville[25] and Memphis terminals. There is no evi-

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[24] Systemwide Job Classification* Statistics for the T.I.M.E.-D.C. system as of March 31, 1971:

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Apprentice Mechanic	4	3		1		
City Drivers						
City Heavy Duty Dr.	419	362	22	32	1	2
City PUD Dr.	874	755	57	56	5	1
Dockmen						
Dockmen	1135	932	107	85	7	4
Swamper	1	1				
Hostler	117	102	9	5	1	
Janitor						
Janitor—Shop	2		2			
Janitor—Terminal	26	11	12	3		
Line Driver	1828	1802	8	5	12	1
Mechanic	325	297	11	12	5	
Mechanic Helper	11	9			2	
Shopmen						
Partsmen	29	26	2	1		
Servicemen	156	80	57	19		
Tiremen	23	12	8	2	1	

3/31/71 Pre-Trial stipulation 14.

* The table shows statistics for only those job classifications relevant to the issues on appeal. Omitted are office and supervisory positions.

[25] See as of March 31, 1971, the employee complement by race:

	Total	White	Black
Line Driver	74	74	0
City Operation			
City Driver	31	31	0
Dockman	70	70	0
Hostler	6	6	0
Shop			
Mechanic	30	28	2
Partsman	3	3	0
Serviceman (including Tireman)	29	10	19

The first Black ever hired as a regular mechanic at the terminal was employed on April 15, 1968, approximately a month before the Government's suit was filed. The first Black ever hired as a regular dockman at the terminal was employed on September 1, 1969.

dence that Blacks were employed on a regular basis in any job other than serviceman until April 15, 1968 at Nashville. Mechanics, partsmen and servicemen are now on a common seniority roster, but until May 27, 1971 they were on three separate seniority rosters. The Southern Conference Area Supplemental Agreement effective April 1, 1970 now permits servicemen to bid on and move to mechanic jobs (and partsman jobs) and retain their seniority. However, the Agreement adds a new requirement. Servicemen may bid on and move to mechanic and partsman jobs only if they have "previously qualified" for those jobs under rules established by an employer-union qualification committee.

At Memphis[26] the first transfer of a Black from city operation to LD was in July 1969. It was here where the Government asserted and the District Court impliedly found the anti-Black policy produced an anomalous injury to White city drivers when in 1958 the company abandoned its practice of allowing White city drivers to make extra LD trips.

On the other hand, and to its great credit, T.I.M.E.-D.C. in December 1968, adopted a policy at the Memphis terminal of offering vacancies in LD jobs to qualified city employees before filling these jobs with persons "off the street." And although seniority for fringe benefits can be carried over from city to LD, such transferring city employees may not use their accrued seniority for bidding and layoff purposes as LDs.

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[26] See as of March 31, 1971, the employee complement by race:

	Total	White	Black
Line Driver	104	101	3
City Operation			
City Driver	35	24	11
Dockman (Checker)	112	89	23
Hostler	8	6	2

Line Drivers and city operation employees are on separate seniority rosters.

[2] Statistics, however, of this kind and intensity are not only significant, they may often be dispositive especially in a pattern and practice claim. As we pointed out in Rowe v. General Motors Corp., 5 Cir., 1972, 457 F.2d 348, 358:

> figures of this kind, while not necessarily satisfying the whole case, have critical, if not decisive, significance—certainly, at least in putting on the employer the operational burden of demonstrating why, on acceptable reasons, the apparent disparity is not the real one.

This synthesizes the many holdings of this and other Courts,[27] the latest of which are the trilogy of Rodriguez v. East Texas Motor Freight, 5 Cir., 1974, 505 F.2d 40; Herrera v. Yellow Freight System, Inc., 5 Cir., 1974, 505 F.2d 66; and Resendis v. Lee Way Motor Freight, Inc., 5 Cir., 1974, 505 F.2d 69, which for this very industry and employment practices eliminates all doubts of the decisive significance of flagrant statistical deviations.

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[27] See also Franks, *supra*, at 419; Pettway v. American Cast Iron Pipe Co., 5 Cir., 1974, 494 F.2d 211 at 225, note 34; Johnson v. Goodyear Tire & Rubber Co., 5 Cir., 1974, 491 F.2d 1364, 1371-73; Morrow v. Crisler, 5 Cir. (en banc), 1974, 491 F.2d 1053, 1055; United States v. Hayes International Corp., 5 Cir., 1972, 456 F.2d 112, 120 (Hayes, II); Burns v. Thiokol Chemical Corp., 5 Cir., 1973, 483 F.2d 300, 305; United States v. Jacksonville Terminal Co., 5 Cir., 1971, 451 F.2d 418, 424-36 and 441-442, *cert. denied*, 406 U.S. 906, 92 S.Ct. 1607, 31 L.Ed.2d 815 (1972); United States v. Hayes International Corp., 5 Cir., 1969, 415 F.2d 1038, 1043 (Hayes I); Bing (I) *supra*, at 689; Witherspoon v. Mercury Freight Lines, *supra*, at 498; Brown v. Gaston County Dyeing Machine Co., 4 Cir. 1972, 457 F.2d 1377, 1382, *cert. denied*, 409 U.S. 982, 93 S.Ct. 319, 34 L.Ed.2d 246; United States v. N. L. Industries, Inc., 8 Cir., 1973, 479 F.2d 354, 368-70; Carter v. Gallagher, 8 Cir. (en banc), 1971, 452 F.2d 315, 321, *cert. denied*, 1972, 406 U.S. 950, 92 S.Ct. 2045, 32 L.Ed.2d 338; United States v. Carpenter's Local 169, 7 Cir., 1972, 457 F.2d 210, 214; Parham v. Southwestern Bell Telephone Co., 8 Cir., 1970, 433 F.2d 421; Jones v. Lee Way Motor Freight, *supra*, at 247; Stamps v. Detroit Edison Co., 1973, E.D.Mich., 365 F.Supp. 87, 110; United States v. Central Motor Lines, Inc., *supra*, at 556; United States v. Navajo Freight Lines, *supra*, 6 FEP at 294; United States v. Pilot Freight Carriers, Inc., *supra*, 54 F.R.D. at 522.

But the Government did not stop there. It buttressed its statistical evidence with a massive amount of testimony presented by live witnesses as well as by depositions taken at 10 of the major T.I.M.E.-D.C. terminals reflecting that members of these minority groups with substantial amounts of driving experience had frequently applied initially for and been rejected for the position of LD, and that a substantial number of such qualified persons employed in the city operations unit at each of the 10 terminals had sought and been refused transfer to LD.

Although, with the exception of Memphis (1958-68), there may not have been an explicit no-transfer rule from city to LD the evidence showed a reason in addition to purposeful refusal to hire or transfer minorities. This was the seniority system that prohibited the carry-over of seniority from city to LD for layoff and bidding purposes. Thus the minority employees were locked-in to the positions where they were initially discriminatorily assigned since they would be forced to forfeit their extensive accumulated seniority for bidding and layoff purposes upon transfer to the road.

Of course this practice has been roundly condemned.[28] In *Franks, supra,* at 414 we recently pointed out:

> Though not as drastic as a rigid no-transfer rule, a departmental seniority system discourages transfers and thereby locks a discriminatee into his inferior job by threatening him with loss of his accumulated seniority if he should transfer.

[28] See United States v. Pilot Freight, *supra,* 54 F.R.D. at 522, United States v. Navajo Freight, *supra,* 6 FEP at 276, United States v. Central Motor Lines, *supra,* at 539, 552, 557. The same principle has been recognized in other industries as well. N.L. Industries, *supra,* at 364; United States v. Bethlehem Steel Corp., 2 Cir., 1971, 446 F.2d 652.

The Eighth Circuit only recently observed that:

> The price that the existing seniority plan extracts from the pre-1963 employees for the opportunity to break out of a department to which they were racially assigned is too high, especially since it is to be paid by the same group that has already endured the hardships of past discriminatory practices.

N. L. Industries, *supra,* at 364.

And again this is echoed in stronger terms in *Rodriguez, supra,* at 53, 60, 61. And the pudding's proof being in the eating, this record furnishes fresh confirmation of the wisdom of our declaration in *United States v. Jacksonville Terminal, supra,* at 453 that in "any industry loss of seniority is a critical inhibition to transfer".

Attack of T.I.M.E.-DC and IBT on Evidence

The defendants mount an attack on that portion of the plaintiffs' statistical evidence that compares the proportion of Blacks in the city or Standard Metropolitan Statistical Area (SMSA), where T.I.M.E.-D.C. operates terminals with the proportion of Blacks employed at those terminals. They complain that the SMSA has not been properly defined, and thus it is impossible for them to attempt to rebut the statistics. But the inability to rebut came not from lack of an informed standard. Rather, in most instances for LDs, the inability came from the inexorable zero.[29]

[3] Both as to statistical and testimonial evidence they urge that the evidence of particular incidents of discrimination are too few, too concentrated at certain terminals, and too remote in time to establish a systemwide pattern and practice of employment discrimination. We cannot agree. The plaintiff pro-

[29] For evample, Atlanta with SMSA ratio 77.14% White, 23.35% Negro and a city ratio of 48.40 W, 51.31 N, and 57 White LDs and no Negro; Dallas with SMSA of 83.23 W, 15.98 N, city 74.15 W, 24.01 N, and 20 LDs all White, none Black; Los Angeles with SMSA 85.42 W, 10.84 N, city 77.19 W, 17.88 N, had at LAX and LOS 374 LDs, all but two being White. (See Appendix A to District Court's opinion).

duced evidence of over 40 specific instances of discrimination spread throughout the system of T.I.M.E.-D.C.—instances often egregious and viewed as a whole quite definitely supporting the finding that the pattern and practice of discrimination literally occurred. The terminals at which the Government took depositions are spread throughout the entire T.I.M.E.-D.C. system and for the most part contain the largest LD operations within the system.[30]

[4] On remoteness, the complaint is that the incidents and figures go back too far, some as early as 1957. But for Title VII the past is indeed prologue. We agree with the Fourth Circuit, United States v. Dillon Supply Company, 1970, 429 F.2d 800, 804, that proof is permissible of any "past specific or general act, practice, policy or pattern of racial discrimination which the proof showed had any present discriminatory effect" and thus should be considered by the trial court in such a case.

[5] Under Title VII proof of pre-Act discrimination is always relevant where the present seniority system perpetuates past discrimination. Goodyear, *supra*, at 1374; Local 189 Papermakers v. United States, 5 Cir., 416 F.2d 980 at 988; Quarles v. Philip Morris, Inc., E.D.Va., 1968, 279 F.Supp. 505, 516. In *Jacksonville Terminal, supra*, at 450, we pointed out that "when seniority becomes an issue * * * the past becomes more important."

[6] The Court was not compelled to credit the contention that there were no openings for LD at the time the Blacks applied or sought transfer, or that the applicants failed in filling out forms or seeking the right person. And considering the overpowering prima facie case of pattern and practice the trial court at the liability stage was not required to sustain the counter-

[30] Seven of the ten largest LD operations are located at the ten terminals where depositions were taken. Eleven hundred seventy one LDs are domiciled at the terminals where depositions were taken as opposed to 358 at those terminals where no depositions were taken.

attack on the testimony of individual discriminatees as to credibility, availability or qualification. As we observed in *Hayes* (II), *supra*, at 120

> The inference arises from the statistics themselves and no other evidence is required to support the inference. At this stage of the proceedings it was not necessary for the Attorney General to show the availability of skilled negroes in the community to perform the jobs in question because the burden of going forward and showing the lack of qualified negroes was upon Hayes. This burden is not met by Hayes' attempts to parry specific allegations of alleged discrimination, e. g., the four negroes rejected after failing a typing test and the one turned away for being overweight, or by company officials stating in general terms that no one was refused employment solely because of their race.

[7] Finally, we reject the attempt to discredit the testimonial evidence introduced by the Government or the trial court's conclusions by subjecting them to the analytical steps delineated by the recent case of *McDonnell Douglas Corporation v. Green*, 1973, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668. Both due to its own peculiar factual setting and by its own explicit terms *McDonnell Douglas* is inapplicable to a pattern and practice suit such as the one before us. We dispose of this as we did in *Rodriguez, supra*, at 55-56.

Good Intentions and Recent Improvement

Both T.I.M.E.-D.C. and IBT urge that the pattern and practice finding should not have been made, and that in any event progress by each is such that no mandatory relief was either appropriate or justified.

[8, 9] T.I.M.E.-D.C.'s recent minority hiring progress stands as a laudable good faith effort to eradicate the effects of past

discrimination in the area of hiring and initial assignment.[31] But it is not enough to eradicate the effects of the past discrimination against incumbent minority group members who are presently locked into the positions to which they were initially and discriminatorily assigned. We sounded this note in *Rowe, supra,* at 355

> the problem is not whether the employer has willingly—yea, even enthusiastically—taken steps to eliminate what it recognizes to be traces or consequences of its prior pre-Act segregation practices. Rather, the question is whether on this record—and despite the efforts toward conscientious fulfillment—the employer still has practices which violate the Act. In this sense, the question is whether the employer has done enough.

See also Griggs v. Duke Power Co., 401 U.S. 424 at 432, 91 S.Ct. 849 at 854, 28 L.Ed.2d 158 at 164-65; *Franks, supra,* at 418; Local 53, Asbestos Workers v. Vogler, 5 Cir., 1969, 407 F.2d 1047, 1055; *N. L. Industries, supra,* at 361; Cypress v. Newport News General and Nonsectarian Hospital Assn., 4 Cir. (en banc), 1967, 375 F.2d 648, 658. The Judge was entitled to consider the fact that the significant improvements in T.I.M.E.-D.C.'s employment patterns have occurred subsequent to the initiation of the 1968 Nashville litigation long after the effective date of Title VII. See *Goodyear, supra,* at 1376, n. 36; Jenkins v. United Gas Corp., 5 Cir., 1968, 400 F.2d 28, 33.

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[31] According to the statistics introduced by the defendants in the company's periodic reports to the District Court, total number of minorities employed increased from 7.1% in 1967 to 10.5% in 1972, and to 13% in 1973. During 1971, 16.9% of new hires were members of minority groups and during the first six months of 1973, 72 out of 113 new hires, or 64%, were minority group members. Likewise, during the first six months of 1973, 29 of 95 LDs or 30% belonged to minority groups. Presumably, of course, the 1973 statistics reflected the one-to-one hiring ratio provided by the court-approved consent decree.

IBT likewise emphasizes the Union's efforts to eradicate past discrimination. They point out that in 1970 Article 38, a non-discrimination clause was added to the National Master Freight agreement.[32]

[10] But as with the employer, the issue is not simply what has been done but whether what has been done is enough. Of course, a union is responsible when the seniority system created by its contract perpetuates the effects of past discrimination. See *Goodyear, supra,* at 1381; Robinson v. Lorillard Corp., 4 Cir., 1971, 444 F.2d 791; United States v. St. Louis and San Francisco R.R., 8 Cir., 1972, 464 F.2d 301.

Our careful consideration of the record has convinced us that despite their vigorous attempt, the District Court was entitled to conclude that the defendants have failed to rebut the plaintiffs' prima facie case of employment discrimination. Accordingly the District Court correctly concluded that the defendants have engaged in an extensive pattern of employment practices unlawful under Title VII and that strong remedial action is warranted.

The Remedy

The Affected Class. The Court defined the affected class broadly as all incumbent[33] minority employees who had been

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[32] ARTICLE 38.

Non-Discrimination

The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin.

[33] As the Government's brief (p. 41, n. 80) points out the District Court granted retroactive seniority (to the date of their application) for some of the rejected applicants for new hire, and did not for

hired during the period in which T.I.M.E.-D.C. was engaged in discriminatory assignment and transfer practices. The Court then measurably narrowed the class by the successively declining bidding preference rights to those in App. A, App. B and App. C with similar declining dates of carry-over seniority.

Rightful Place

[11] As this bears on all the relief to be accorded on the reexamination upon remand, we emphasize without repetition each time the doctrine of rightful place. We put it this way in *Rodriguez, supra,* at 61-62:

> We have long subscribed in this circuit to the theory that those who suffer discrimination under Title VII must be permitted to take their "rightful place" when job openings develop. As we said in *Local 189, United Papermakers & Paperworkers v. United States,* 416 F.2d [980] at 988:
>
> > The Act should be construed to prohibit the *future* awarding of vacant jobs on the basis of a seniority system that "locks in" prior racial classification. White incumbent workers should not be bumped out of their *present* positions by Negroes with greater plant seniority; plant seniority should be asserted only with respect to new job openings. This solution accords with the purpose and history of the legislation.
>
> See Note, Title VII, Seniority Discrimination, and the Incumbent Negro, 80 Harv.L.Rev. 1260 (1967). Thus, black and Mexican-American city drivers, many of whom would now be road drivers but for the discrimination of the defendants, must be given an opportunity to transfer to the road as road driving job openings develop.

See also *Franks, supra,* at 416; *Pettway, supra,* at 222-25; Bing (II) v. Roadway Express, Inc., 5 Cir., 485 F.2d 441 at 450; *Jacksonville Terminal, supra,* at 452-53; *189 Paperworkers, supra,* at 988; *Bethlehem Steel, supra,* at 658-61.

The purpose of seniority carry-over under the rightful place doctrine is to give the discriminatee the incentive to transfer by

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others. This appeal does not pertain to that issue, but is concerned only with the rights of incumbent employees who are members of the affected class.

But since the affected class has to be reexamined to eliminate the disparities between App. A, App. B and App. C, the District Court has to have great flexibility on remand to consider former applicants who never became incumbents. The priorities granted to such former applicants under App. A or App. B may have to give way as will carry-over seniority dates, since we have rejected the notion of super seniority. In Franks v. Bowman Transp. Co., 5 Cir., 1974, 495 F.2d 398, 417, *rehearing en banc denied,* — U.S. —, 95 S.Ct. 1421, 43 L.Ed.2d 669 (1974), we have recently observed that

> In seeking application-date seniority for members of class 3 (black applicants who applied for OTR jobs before January 1, 1972) appellants ask us to take a giant step beyond permitting job competition on the basis of company seniority. They ask us to create constructive seniority for applicants who have never worked for the company. Granting that the black OTR applicants who were rejected on racial grounds suffered a wrong, we do not believe that Title VII permits the extension of constructive seniority to them as a remedy.

The District Court specifically described App. C as those individuals either for whom no evidence was offered, or who were no longer employed by the Company. So it would seem that all former employees and rejected applicants should literally have been included in App. C. On appeal, however, the Government disclaims any attempt to seek review of the District Court's failure to grant individual relief to the rejected applicants or former employees in App. C. The issue then is really not before us as to these applicants for jobs who were not incumbents.

But in any event, we would caution all parties that the citing of *Franks* is merely the repetition of the current state of the law in the Fifth Circuit. Certiorari has recently been granted by the Supreme Court on *Franks* and of course all wait with baited breath for the outcome produced by the great people east of the Potomac River. The flexibility we have given the District Court on remand is elastic enough to accommodate whatever wisdom will come from the Highest Court.

removing the major disincentive to such transfer (loss of accumulated seniority). It also gives the discriminatee enough seniority in the new unit to permit effective competition for advancement and to provide the protection against the threat of layoff to which the discriminatee would be exposed because of the initial discrimination. *Bethlehem Steel, supra,* at 660; *Bing (II), supra,* at 450; *Local 189 Papermakers, supra,* at 988.

Qualification Date

[12] As with "rightful place," just discussed, this too is a recurring factor which has to be taken into account as relief is accorded on the remand. Again in *Rodriguez, supra,* at 63, we pointed out that "in *Bing* we approved a 'qualification date' formulation—the date a transferee had the experience necessary to qualify him for a road driving job. 485 F.2d at 451."

In describing its operations we rejected the recent criticism of this rule by the Sixth Circuit as made in Thornton v. East Texas Motor Freight, 6 Cir., 1974, 497 F.2d 416. *Rodriguez,* 505 F. 2d at 64.

Since there was no uniform system-wide driver experience requirement we do not undertake to blueprint what the qualification date may or should be for LDs or other jobs from which Blacks and SSAs have been excluded.[34] The evidence on remand may justify some non-uniformity so long as the standard laid down meets the test of *Rodriguez.*[35]

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[34] Since the discrimination has been in denying minorities the opportunity to take tests, etc. for transfer to LDs, for example, the "Qualification Date" is not limited to the date on which the class member is finally allowed to take the test pursuant to the Court's decree. It may, and often will, be fixed at the date in the past on which the person was in fact qualified had he been given the opportunity to establish it.

[35] See e. g., 505 F.2d at 63 n. 29 and 64 n. 30. The Government recognizes it may vary. See, e. g., Atlanta limiting seniority to August 1, 1958, the date on which LD positions for Whites or Blacks was established at that terminal.

In the Supplemental Opinion, the District Court also ordered included in App. C those White employees hired into city operation jobs at the Memphis terminal before August 8, 1958 who had not yet transferred to LD as of that date (Supp.Op., p. 2, para. III, i).

Descending Priority—App. A, App. B, App. C. The District Court prescribed three classes of discriminatees, App. A, App. B, App. C, and gave to those in App. A first priority for bidding (and layoff) to be followed next by the few in App. B. and the remaining some 300 were put in App. C. Equally important were the declining carry-over seniority dates—those in App. A the effective date of Title VII (July 2, 1965), in App. B the date of the filing of the Texas suit (January 14, 1971), and lastly for App. C the date a discriminatee qualified for and obtained the new position.

The classification was made on the basis of the showing of relative prejudice. For those in App. A the live testimony (in Court or by deposition) showed positive discrimination and prejudice. Those in App. B likely suffered but the demonstration was not so positive. As to those in App. C the Court's final order held that although "all are members of a class of discriminatees" there was "either—no evidence presented of discrimination against—" them "or they are no longer employed by T.I.M.E."

[13] It is clear that the Judge thought that there had to be proof of individualized discrimination and prejudice. This misconceives both the purpose and procedural structure of a pattern and practice suit (see note 3, *supra*). Congress circumscribed the circumstances in which the heavy power of the Government through the Attorney General could enter the lists. To trigger the suit discrimination may not be merely isolated, sporadic, or non-repetitive. United States v. Iron Workers, Local 86, 443 F.2d 544, 552, *cert. denied,* 404 U.S. 984, 92 S.Ct. 447, 30

L.Ed.2d 367; United States v. Mayton, 5 Cir., 1964, 335 F.2d 153, 159; United States v. Ramsey, 5 Cir., 1964, 331 F.2d 824, 837; Jacksonville Terminal Co., *supra*, at 441.

To permit the Court to grant any relief it must find pattern and practice. The proof through statistics and live swearers is directed toward that principal issue plus, in a more general sense, facts bearing on the nature, kind and extent of the relief which is either appropriate or required. It would be contrary to a claim of this structure to have to offer testimony concerning every member of the affected class. By its very nature it is a kind of class action maintained by the sovereign to vindicate the rights of the whole class.[36]

With the pattern and practice established to the satisfaction of the Judge, it would defy reason and waste precious judicial resources for the Court either to require or permit individualized proof for every member of a class here numbering nearly 400 but frequently involving thousands for whom effective relief could not be achieved were we to approve the approach of the District Court here. Whatever evidentiary hearings are required for individuals can well be postponed to the remedy.

[14] The result is that we cannot accept the gradations of App. A, App. B, and App. C. For all we know, at this stage some on App. C may have suffered discriminations even more egregious than those whom the Government singled out to be persuasive witnesses to establish pattern and practice. All those on App. A, App. B and App. C are entitled to be given an opportunity to bid on future vacancies in the specified job classifications to which they are allowed to transfer by the District Court's order on the basis of their seniority and, if they qualify for those

[36] Of course they are not identical. *Rodriguez, supra*, at 66, points out some distinctions between private plaintiffs' class actions and a Government pattern and practice suit, particularly as to the interests to be served.

jobs, to be permitted to exercise their full seniority in such jobs for all purposes, including bidding and layoff.[37]

We believe that such a bidding procedure is designed to eradicate the present effects of past discrimination by permitting all members of the affected class rather than just a selected few to have the opportunity to advance to the positions that they might have achieved in the absence of racial discrimination.

As is true of the relief mechanism of the District Court's order, such a bidding procedure provides all members of the affected class at a *given terminal* the opportunity to bid on a vacancy in the LD position prior to persons who are not a member of the affected class, whether incumbent employees or otherwise.

[15] Nor does this bidding procedure amount to reverse discrimination in violation of § 703(j) of the Act.[38] It is now well established that granting the first opporutnity to bid on future vacancies to members of such an affected class is a permissible, and in some instances essential, remedy where it is

[37] Those who have already moved to vacancies in such job classifications will be permitted to exercise their full seniority in those jobs and likewise for all purposes.

[38] 42 U.S.C.A. § 2000e-2

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an inbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

necessary to effectively eradicate the present effects of past discrimination. See *Bing (II), supra,* at 485; *Franks, supra,* at 413; *Vogler, supra,* at 1054; *Pettway, supra,* at 248. Indeed, in the discriminatory hiring context preferential treatment in the form of temporary quota relief has frequently been ordained by the courts.[39]

App. A, App. B, and App. C Seniority Carry-Over Dates

Tied into the App. A, App. B and App. C descending priorities for bidding and layoff purposes was a similar tri-part decline in seniority carry-over dates. We find none of them acceptable.

[16] To the most favored group (App. A) the date fixed was the effective date of the Act (July 2, 1965). But under the rightful place theory members of the affected class of discriminatees have regularly been allowed to use full seniority to bid on vacancies and to continue to use it for bidding and layoff purposes in the new position. *Franks, supra,* at 416; *Pettway, supra,* at 248; *Jacksonville Terminal, supra,* at 454; *Quarles, supra,* at 521. And that includes *full* seniority even though it may extend back beyond the "effective date" of Title VII since seniority provisions that call for the forfeiture of accumulated seniority on transfer serve to *presently* perpetuate the effects of pre-Act discrimination. *Bing (II), supra,* at 451; *Jacksonville*

[39] See *Morrow, supra,* at 1056, NAACP v. Allen, 5 Cir., 1974, 493 F.2d 614; Carter v. Gallagher, 8 Cir. (en banc), 1971, 452 F.2d 315, *cert. denied,* 1972, 406 U.S. 950, 92 S.Ct. 2045, 32 L.Ed.2d 338; United States v. Wood, Wire & Metal Lathers Local No. 46, 2 Cir., 1973, 471 F.2d 408, 413, *cert. denied,* 412 U.S. 939, 93 S.Ct. 2773, 37 L.Ed.2d 398; United States v. Ironworkers, Local 86, 9 Cir., 443 F.2d 544, 553-54, *cert. denied,* 404 U.S. 984, 92 S.Ct. 447, 30 L.Ed.2d 367; Vulcan Society v. Civil Service Commission, 2 Cir., 1973, 490 F.2d 387, 399; Bridgeport Guard Inc. v. Members of Bridgeport Civil Service Commission, 2 Cir., 1973, 482 F.2d 1333, 1340-41.

Terminal, supra, at 454; *Bethlehem Steel, supra,* at 666. Indeed, there is no precedent we are aware of which limits carry-over seniority to the effective date of the Act.

[17] The App. B limitation to the date of filing of the Texas suit (January 14, 1971) fares no better. First, it now flies in the teeth of *Rodriguez* in which we reiterated the qualification date principle despite the Sixth Circuit's criticism and use of the date of application for transfer or of filing an EEOC charge. 505 F.2d at 64. Next, it ignores the accepted principle that where there has been a showing of classwide discriminatory practices coupled with a seniority system that tends to freeze or perpetuate the effects of that discrimination, a member of the affected class need not actually show that he or she unsuccessfully attempted to transfer to the excluded position. *Bing (II), supra,* at 451; *Bing (I), supra,* at 689; *N. L. Industries, supra,* at 369; *Leeway Motor Freight, supra,* at 247; *Cyprus, supra,* at 653; *Pilot Freight, supra,* at 522.

The Courts have as a practical matter recognized that a member of the affected class may well have concluded that an application for transfer to an all White position such as LD was not worth the candle.[40]

And, of course, the App. C limtation to the date the class member somehow succeeds to a vacancy is worse. Aside from the fact that this exposes App. C members to discrimination at the hands of their fellow victims (App. A and App. B), it means for all practical purposes that the discrimination in favor of Whites continues.

[40] In *Bing (II), supra,* at 451, we recently noted that

> If an employee realizes full well that blacks simply are not hired as road drivers, why should he bother to apply? Certainly a few, such as Bing, have the courage to fight "the system," but it is equally certain that others must have been intimidated and discouraged by Roadway's discriminatory practices.

This means that for all members of the class there should be full company employment seniority carry-over for bidding and layoff purposes, subject of course to the proper application of the qualification date principle (see n. 35, *supra* and related text). On remand and after appropriate evidentiary hearings the District Court's decree must be suitably modified to eliminate the prescribed priorities, the prescribed seniority dates, and the prescribed differences therein, as between those in App. A, App. B and App. C.[41]

Individual Relief

We do not think it necessary for the trial court to reexamine the findings as to the discrimination against those in App. A or App. B and the prejudice suffered by each. But as the A, B, C priorities and their distinctive seniority dates are now eliminated, the employment position of each may be affected and call for further adjustment.

[18] Although not attacked here as such (see note 33, *supra*), since the trial court must make a basic reexamination to assure that all members of the affected class benefit in the relief we prescribe, we recognize that there may be need for two things. The first is an evidentiary exploration of the distinction between incumbents, former employees and applicants who were never hired. Second, there should be a legal determination consistent with all our cases concerning relative relief (including bidding priorities and seniority dates) appropriate to each.[42]

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[41] According to the District Court's decree, the seniority date allowed App. A was July 2, 1965, the effective date of Title VII, except for those who were employed later.

[42] Of the 30 in App. A, 20 of these are incumbents excluded from LDs. Of the remaining 18 covered by specific testimony, 9 were former employees, 2 of whom were put in App. A, 1 in App. B, and the balance in App. C together with all rejected applicants.

Nashville Servicemen

[19] The District Court ordered that proper training should be provided for the six Nashville Black servicemen (included in App. A) for whom there was specific evidence in the record of exclusion from the city operations and mechanic and partsman classifications, and that they be allowed to bid on future vacancies in the classifications of dockmen, partsman, and mechanic and if qualified should be permitted to carry over seniority as of July 2, 1965, the effective date of the Act. We approve the District Court's remedial action but modify it in several respects. First, the July 2, 1965 date is out and full employment seniority as discussed generally will apply. Next, the training transfer remedy prescribed by the District Court should apply to *all* Blacks hired into the serviceman classification at the Nashville terminal prior to 1969[43] (the date when the first Black was hired as a regular dockman in Nashville). Of course as to all others, servicemen are entitled, on qualification, to bid for LD with appropriate seniority.

The Government has one further objection. The 1970 union contract abolished the requirement that servicemen at the Nashville terminal were required to forfeit accumulated seniority in order to transfer to the mechanic or partsman's classification. However, the new contract provided that transferees would be required to qualify for the positions on the basis of requirements set forth by an employer-union committee.

[20] The United States argues that the new employer-union committee violates Title VII in that it imposes a new and more stringent requirement on Blacks now seeking to transfer from serviceman to mechanic or partsman than was imposed on Whites seeking a similar transfer prior to 1970. While the new requirement may indeed be different, there is nothing in the

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[43] The other 10 were included in App. C.

record to compel the conclusion that by allowing the union to participate in the formulation of job qualification requirements it is in any way more onerous than the prior practice of leaving questions solely to the employer.

But we think that in the modified decree specific provision should be made to assure continuing power in the District Court to monitor performance of employment practices by the Joint Committee. The burden is on the Teamsters and T.I.M.E.-D.C. to demonstrate that the process is fairly administered without minority discrimination.

Memphis Transfer Policy

[21] As mentioned previously, the T.I.M.E. Memphis terminal discontinued its policy of allowing White city drivers to make extra line runs and transfer to the line in 1958 in order to avoid having to grant similar privileges to Black city drivers. The Government requested that all Whites hired into the city driver department prior to August 8, 1958 (apparently the date when the practice was discontinued) be allowed to bid on and if qualified transfer to future vacancies in the LD position with carry-over seniority as of August 8, 1958.

The District Court implicitly accepted the contention that these Whites were the victims of a racial practice directed against Blacks. But consistent with its approach generally about the need for individualized testimony, the District Court put them in App. C with its very junior priority and seniority. Of course this treatment falls with our rejection of the App. A, B, C structure.

Layoff For Vacancy

[22] In connection with provisions in the Union contract for priority bidding rights after a layoff, the Court prescribed that

a vacancy would not be deemed to exist unless it continued for three years.[44]

We recognize that the Union contract provision granting laid-off LDs a three-year period in which they may move into vacancies at their home terminal without competition was not adopted for discriminatory purposes. Nevertheless, we believe that to allow LDs a three-year priority right on future openings would unduly impede the eradication of past discrimination. See *Hayes (II), supra,* at 118; Rowe v. General Motors Corp., 5 Cir., 1972, 457 F.2d 348, 358; *Jacksonville Terminal, supra,* at 450-51. Therefore we modify the decree to provide that when a vacancy which is not a purely temporary one arises in the LD position at a T.I.M.E.-D.C. terminal, any LD on layoff at that terminal may compete against members of the affected class on the basis of full employment seniority.

The individual with the greatest employment seniority will be given the first opportunity to qualify. We think that such modification will accommodate the discriminatees' right to advancement with the laid-off LDs "security interest" in his former position.

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[44] Par. 9(a) of the District Court's final order defined a vacancy as

> any opening which is caused by the transfer or promotion to a position outside the bargaining unit, death, registration or final discharge of an incumbent, or by an increase in operations or business where, ordinarily, additional employees would be put to work. A vacancy shall not exist where there are laid off employees on the seniority roster where the opening occurs. Such laid off employees shall have a preference to fill such laid off positions when these again become open without competition from the individuals granted relief in this case. However, if such layoff continues for three consecutive years the position will be deemed as "vacant" with the right of all concerned to compete for the position, using their respective seniority dates, including those provided for in this Order.

Southern Area Conference Modified Seniority

As detailed earlier, the Teamsters at terminals in the Southern Area Conference (see note 5, *supra*) have adopted a Modified Seniority system under which laid-off LDs may compete for vacancies or bump junior LDs at other terminals within the Southern Conference. The District Court, while recognizing that the Southern Conference Modified Seniority provisions are neutral on their face, determined that unaltered, they would tend to impede the advancement of Blacks and SSAs into LD positions within the Southern Conference since laid-off LDs could well fill the vacancies as they occur or even keep vacancies from occurring by bumping junior LDs at particular terminals.

[23] Therefore the District Court provided the following modifications. Laid-off LDs in the Southern Conference may continue to bump junior LDs at other terminals. But where a vacancy occurs, a laid-off LD from another terminal cannot transfer in and take priority over any affected class members on App A or App. B. In view of our disapproval of the District Court's tri-part division of the affected class, we will adapt the decree to provide that a laid-off LD may not move to another terminal where a vacancy exists and thereby automatically take precedence over *any* member of the affected class at that terminal. Of course, the laid-off LD may still move into the vacancy whenever there are no members of the affected class remaining who have not been offered the opportunity to qualify for the LD position.

The District Court further provided that the laid-off LD who bumps a junior driver at another terminal may exercise his right of recall when an opening occurs at his own terminal without competition from members of the affected class. However, when an opening occurs at the terminal where the bump took place, members of the affected class may compete on the basis of seniority with the LD on layoff who was bumped (or with any other LD on layoff at that terminal).

Finally, in an effort to modify the Modified Seniority provisions in a manner that would speed up the advancement of discriminatees into the LD position, the District Court provided that members of the affected class in the Southern Conference may bid on LD openings at other terminals within the Conference in competition with employees at the terminal on the basis of employment seniority after all members of the affected class at that terminal have been given the opportunity to bid on the position. This does not have the effect contended since this provision applies only after the priorities prescribed have been exhausted at the terminal where the vacancy occurs.

Aside from our slight modification, the District Court did not abuse its discretion in adjusting the Southern Conference Modified Seniority bidding procedure so as to accommodate the effectuation of its remedy.

Victims and White Incumbents

[24] In its original opinion the District Court provided that those in App. C were entitled to vacancies "before the general public". This, of course, subordinated them to White incumbents (not members of the class) who had no seniority for the position. By supplemental opinion and order the Court recognized that the removal of discriminatory practices would be delayed and the possibility would exist that inequities would result. Consequently it ordered that those in App. C "shall also be given preference over other . . . TIME employees who have no seniority in the category where the vacancy occurs".

The District Court's action in the supplemental opinion was undoubtedly precipitated by the fact that the victims were divided into App. A, B and C. Since App. A and B were given preference over C and those in App. C were given relatively small relief in comparison, the Court thought it only fair to give those in App. C a priority over everyone else in relation to the relief awarded them.

In light of our abolishment of the App. A, B and C classification, however, the District Judge should have the opportunity to re-examine the preference given to those in App. C over everyone. With all the victims now in one class, the record should be developed when necessary to examine the impact of such a preference on current non-victim, incumbent employees who have been employed by the company longer than a particular victim. Consequently this portion of the remedy will be vacated for further consideration.

Remand

The case is remanded for further evidentiary and judgmental proceedings[45] consistent with this opinion.[46]

Remanded.

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[45] With respect to the problems of the positions or rights of particular individuals, the District Court should feel free to fully use special masters, since with the large numbers of people involved, this presents "a showing that some exceptional condition requires it." F.R.Civ.P. 53(b).

[46] Except for those portions of the District Court's order which we have disapproved or modified, the balance of the decree remains intact, subject to such modifications as the District Court deems appropriate as a part of the final order entered by the District Court on remand.

ORDER
Of the District Court for the Northern District of Texas,
December 13, 1971; 335 F.Supp. 246

In the United States District Court
For the Northern District of Texas
Lubbock Divison

United States of America, Plaintiff, vs. T.I.M.E.-DC, Inc. and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and the International Association of Machinists and Aerospace Workers, AFL-CIO, Defendants.	Civil Action No. 5-868

Order

(Filed December 13, 1971)

The Court has under consideration the motion of plaintiff to add a party defendant and to submit amendments to the complaint.

Plaintiff's original complaint is against T.I.M.E.-DC, Inc., a nationwide employer in the transportation industry, and two international unions, seeking injunctive and declaratory relief. It appears that the employer has itself, and through its predecessors, entered into various labor contracts with approximately 70 local labor unions representing groups of employees at differ-

ent terminals and other facilities of T.I.M.E.-DC throughout the United States. Each of these contracts is directly between the employer and the local labor union, and the two defendant international unions are not signatory parties to any of said contracts. Plaintiff alleges that because of said contracts and the practices thereunder, the defendant employer follows a policy and practice of discrimination against Negroes and Spanish-surnamed employees, denying them an equal right to advancement and other employment benefits.

The defendant international unions have moved to dismiss or to stay the proceedings in this case until such time as the joinder of the local unions has been effected. Plaintiff has now moved to join Local No. 745 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as a defendant individually and as a representative of a class. This local is headquartered within the Northern District of Texas.

It has been determined by the Court that the ultimate judgment of this Court will, if favorable to the plaintiff, require in all probability the alteration of the contractual agreements between T.I.M.E.-DC and the local unions. Further plaintiff is seeking injunctive relief against the employer and those in concert with the employer, ordering them to cease any discriminatory practices pursuant to such labor contracts. It has been urged upon the Court that each contract differs according to the nature of the particular local union and the local circumstances involved, and that there is not a common question of fact in all of said contracts. Defendants insist therefore that Local 745 should not be permitted to be joined in this action as a representative of a class. It has been further pointed out that Local 745 is a local of the International Teamsters Union while some of the contracts are with locals of the International Machinists Union, and that 745 could not therefore be representative of this second group.

This Court is of the opinion that should it finally enter an order and judgment in favor of the plaintiff, such a judgment would, as a practical matter, be meaningless insofar as it pertained to any local union that was not actually before and subject to the jurisdiction of this Court. Any judgment that alters or amends the contractual rights of parties should be done only when those parties are not only subject to the *in personam* jurisdiction of the court but are also personally before the court. This is even more important when injunctive relief and remedies sought for enforcement of the injunction are involved. If such relief were to be ordered by this Court against the local unions who are represented only as members of a class, it would only mean that the merits of the local case would have to be determined again in some other proceeding in order to obtain enforcement. Before such injunction could be enforced, another court would have to inquire into the particular facts involving that particular local union in its dealings with T.I.M.E.-DC.

While it is true that *Washington v. Lee*, 263 F.Supp. 327 (M.D. Ala. 1966), aff'd 390 U.S. 333 (1968) does in fact recognize that injunctive relief can be afforded against defendants who are members of a class, the suit now under consideration involves not only injunctive relief but also the varying terms of some 70 different contracts with the local unions. To enforce a class injunction against the sheriffs of Alabama, each of whom is singly in control of discrimination in his own jail (*Washington v. Lee, supra*) is a far cry from attempting to enforce changes in contractual agreements between a nationwide employer and local labor unions having as many as 10,000 members in one local.

The matters to be decided in this case require that the deciding court have *in personam* jurisdiction and that the defendants be personally before the Court. In addition, this Court also finds that there are not sufficient common questions of

fact to justify the use of Rule 23, Federal Rules of Civil Procedure, and that Local 745 could not fairly and adequately represent the members of the class. Although the ultimate question is the same—that of discrimination—the evidentiary facts are so diverse as to render a class action unfeasible. It seems apparent to the Court that each local should be given the opportunity to appear and be heard on its own facts and its own defenses.

It is therefore Ordered that:

I

The defendant unions' motion to dismiss will not be ruled upon at this time, but such motion will be carried along with the trial of the case on its merits, and their motion to stay the proceedings will be granted to the extent hereinafter set forth.

II

The parties will not be required to comply with the pre-trial schedule heretofore set pending further notice by the Court.

III

Permission is here Granted to plaintiff to join Local 745 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as a defendant individually, but not as a representative of a class.

IV

The plaintiff is hereby Ordered to determine if it desires to prosecute its cause of action against any other local unions that have contracts with T.I.M.E.-DC. This Court will be notified by plaintiff on or before February 1, 1972 as to whether or not

plaintiff desires to file actions against local unions in the proper district court having jurisdiction thereof. If the plaintiff desires to proceed against such local unions, same shall be forthwith filed and this Court notified, and this Court will then determine the proper procedures for multi-district litigation under the provisions of Title 28, U.S.C. § 1407. If plaintiff does not desire to file such additional suits, this Court should be immediately notified, and as soon as the amendment has been filed against Local 745 this Court will notify the parties of the setting of this case against the defendants presently named and Local 745.

The Clerk will furnish a copy hereof to each attorney.

Entered this 13th day of December, 1971.

/s/ HALBERT O. WOODWARD
United States District Judge

ORDER
Of the District Court for the Northern District of Texas
January 20, 1972; 4 F.E.P. Cases 875

In the United States District Court
For the Northern District of Texas
Lubbock Division

United States of America,
Plaintiff,
v.
T.I.M.E.-D.C., Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO,
Defendants,
Consolidated With
United States of America,
Plaintiff,
v.
T.I.M.E. Freight, Inc. (Now Known as T.I.M.E.-D.C., Inc.) and Local 480, International Brotherhood of Teamsters,
Defendants.

Civil Action No. 5-868.

Civil Action No. 5-897.

Order

I. *Status of the Pleadings*

The United States of America, through the Attorney General, filed its original complaint against T.I.M.E.-DC, a national motor freight carrier, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an international labor union, alleging violations of the Civil Rights Act of 1964 (78 Stat. 253), 42 U.S.C. 2000e *et seq*. Subsequently, a motion was made and granted to add International Association of Machinists and Aerospace Workers, AFL-CIO, as party defendants, and all defendants have now answered.

Defendant T.I.M.E.-DC is a common motor carrier with forty-nine terminals in twenty-four states, employing approximately 6,500 persons. The defendant international unions, through their affiliated locals, are alleged to be the exclusive bargaining representatives of the majority of the employees of T.I.M.E.-DC. The burden of the complaint is that T.I.M.E.-DC follows a policy or practice of discrimination in employment against Negroes and Spanish surnamed persons in the following particulars:

(a) refusing to recruit, hire, transfer and promote Negro and Spanish-surnamed persons on an equal basis with whites;

(b) hiring or assigning job classifications on the basis of race or national origin, with Negro and Spanish-surnamed employees being assigned to lower-paying or less desirable jobs while higher-paying and more desirable jobs are reserved for whites;

(c) refusing to employ Negroes and Spanish-surnamed persons as non-regular employees and denying these persons the opportunity to become regular employees on the same basis as whites;

(d) refusing to promote and transfer Negro and Spanish-surnamed employees to higher positions on the same basis as whites.

The defendant unions are alleged to be parties to collective bargaining agreements with T.I.M.E.-DC which provide for accumulation of separate lines of seniority within each job classification and which therefore tend to prevent transfer from one classification to another. If, as plaintiffs allege, Negro and Spanish-surnamed employees are assigned as a matter of policy or practice to less desirable classifications, such agreements would reinforce the pattern of keeping those persons trapped in lower classifications.

Plaintiff seeks injunctive relief to prohibit defendants from engaging in such practices and from failing to take adequate steps to correct the effects of past discrimination.

In 1968, the United States of America filed its complaint in the United States District Court for the Middle District of Tennessee, Nashville Division, against the company then known as T.I.M.E. Freight, Inc., now T.I.M.E.-DC, alleging certain discriminatory practices in the Nashville office. Subsequently, permission was granted to plaintiff to join Local 480, International Brotherhood of Teamsters, as a party defendant, and both defendants have duly answered.

The specific allegations and prayers for relief against the defendants in the Tennessee case were substantially identical to those in the action later filed in this Court; for this reason, the Tennessee case was transferred to this Court and the two cases have been consolidated for trial.

II. *Motions Before the Court*

The following motions have been filed:

1) Motions by both international unions that they be dismissed because they are not parties to any of the contracts or practices alleged.

2) Motion by plaintiff, the United States of America, to add Local No. 745 of the International Brotherhood of Teamsters, a Dallas local, both individually and as representative of a class of all locals having similar contracts with T.I.M.E.-DC.

3) Motion by T.I.M.E.-DC to dismiss because of failure to join indispensable parties: namely, all the other local unions having similar contracts with T.I.M.E.-DC; or, in the alternative, to limit the trial issues to those involving solely the parties now before the Court.

As to Motion No. 1, the Court has noted that although the international unions were not themselves signatory parties to any of the contracts in question, they have been alleged by plaintiff to have been vital parties to the bargaining negotiations from which those contracts resulted. In view of these allegations, it is the opinion of this Court that they are proper parties to this suit, and said motions to dismiss by the international unions are therefore DENIED.

Motion No. 2, to join Teamsters Local 745 individually and as representative of a class, was determined by the Court on December 13, 1971, and the ruling denied the motion for class action, but gave plaintiff permission to add Local 745 individually as a party defendant. In addition, the Court granted plaintiff permission to file suits against all the other involved locals and to then proceed for consolidation of all suits under the multi-district litigation practice. Plaintiff has declined both to add Local 745 individually and to proceed against any other locals, and has requested that the case be set for trial with the parties before the Court.

Motion No. 3, the motion of T.I.M.E.-DC to dismiss, presents a more complex problem. Were it clear to the Court that any relief granted would necessarily affect rights of local unions who are now under contract with T.I.M.E.-DC and who are not before the Court, there would be no question but that the case

should be dismissed for failure to join indispensable parties. But it appears to the Court that the allegations and prayers for relief present a great many issues regarding the practices and policies of T.I.M.E.-DC itself which can properly be adjudicated in the absence of any other parties. Further, it is obvious that even the contractual issues can properly be adjudicated as they involve Local 480, the Tennessee local now before the Court. The motion of defendant T.I.M.E.-DC to dismiss for failure to join indispensable parties is therefore DENIED.

This Court is of the opinion that the primary goal of the Civil Rights Act of 1964 would be thwarted by dismissing this suit and requiring a multiplicity of suits to be tried before resolving the issues now properly before this Court. And if, in fact, the evidence shows that the international unions are active in the negotiations of such contracts or in effect control the terms of such contracts on behalf of their locals, then ample relief could be afforded against the international unions as well as against employer. It is recognized that any remedy afforded by this Court would be granted only as to the named parties defendant. *Russell v. American Tobacco Company*, 3 F.E.P.T. Cases 201, (U.S.D.C. M.D.No.Car., 1971).

If the Court finds that the relief sought would force upon a defendant a breach of contract with a signatory party not before this Court, serious consideration would be given to denial of such relief. However, the pleadings and briefs indicate that at least some types of relief would be available without causing such a conflict.

T.I.M.E.-DC, in its brief, has informed the Court that additional time is needed for trial preparation and that the trial itself will demand several weeks. They have suggested, without requesting, that it would be well for the question of whether the locals are indispensable parties to be decided by interlocutory appeal to the United States Court of Appeals for the Fifth Circuit under the provisions of 28 U.S.C. 1292(b). This matter not now being before the Court, the Court hereby directs that any such motion for interlocutory appeal be filed in this Court on or before February 15, 1972. If the motion is denied, the case will proceed to trial and is tentatively set on the non-jury docket for May 1, 1972 at 10:00 a.m. in Lubbock, Texas. The previous setting of April 4, 1972 is hereby vacated, as the Court had overlooked a request by counsel regarding a prior commitment during that period.

The pre-trial procedures heretofore ordered will be complied with except as modified above and except that each step may be delayed for thirty days due to the later trial setting.

The Clerk will furnish a copy hereof to each attorney.

ENTERED this 20th day of January, 1972.

/s/ HALBERT O. WOODWARD
United States District Judge

OPINION
Of the District Court for the Northern District of Texas
October 19, 1972; 6 F.E.P. Cases 690

In the United States District Court for the
Northern District of Texas

Lubbock Division

United States of America, Plaintiff, v. T.I.M.E.-DC, Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO, Defendants.	Civil Action No. 5-868
United States of America, Plaintiff, v. T.I.M.E. Freight, Inc. (now T.I.M.E.-DC, Inc.) and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Defendants.	Civil Action No. 5-897

Memorandum Opinion

The United States brings this suit against defendants T.I.M.E. D.C., Inc. (hereinafter referred to as TIME), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as Unions) alleging discrimination in employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq*. The International Association of Machinists and Aerospace Workers, AFL-CIO was joined as a defendant in Civil Action No. 5-868 on April 21, 1971.

This court has jurisdiction over the parties and subject matter in this action by virtue of 28 U.S.C. § 1345; Civil Rights Act of 1964, 42 U.S.C. § 2000e-6(b).

Defendant TIME is engaged in trucking operations throughout the United States and is an employer within the meaning of 42 U.S.C. § 2000e(b) and is engaged in an industry affecting commerce within the meaning of 42 U.S.C. § 2000e(h). Defendant Unions are labor organizations within the meaning of 42 U.S.C. § 2000e(d), and are engaged in an industry affecting commerce within the meaning of 42 U.S.C. § 2000e(e).

T.I.M.E. D.C. Inc. is the name of a trucking concern spawned out of the merger and acquisition of various smaller firms throughout the country, to-wit: Los Angeles Motor Express, D.C. International, Inc., T.I.M.E. Freight, Inc., Texas-Arizona Motor Freight, Super Service Motor Freight, Inc., Southeastern Trucking Lines, Southwestern Freight Lines, Inc., and Intercity Motor Express (which later became T.I.M.E., Inc.). T.I.M.E. D.C. is used in this opinion in reference to all the above named corporations as well as to the present corporation.

The cases being consolidated, trial on the merits began before the Court on May 3, 1972. All parties and their attorneys were present and testimony and evidence were heard and depositions were introduced which had previously been taken in this cause. Trial of the case ended on May 12, 1972 by a Consent Decree

in Partial Resolution of Suit. That decree is here referred to and made a part of this opinion for all purposes.

The Partial Decree provided, among other things, that TIME would revise its hiring and promotional practices so that more minorities would be hired in the future.

The Government names specific individuals as those who were allegedly victims of TIME's discriminatory hiring practices. Plaintiff has submitted two lists in that regard: one listing individual discriminatees and the amount of monetary damages they have suffered, and another listing individual discriminatees with suggested specific equitable relief to be afforded each individual. This last instrument was filed with the Clerk on June 19, 1972 and is designated "Individuals for Whom Plaintiff Seeks Relief." The Consent Decree provided that TIME D.C. would pay $89,500.00 to compensate individual discriminatees as named on list number one for monetary damages suffered. In regard to those claiming specific equitable relief, the Consent Decree provided:

> 13. All job vacancies at T.I.M.E. D.C. terminals and other facilities at which it employs personnel shall be filled in the following sequence:
>
> > (a) By those persons who may be found by the Court, if any, to be individual or class discriminatees suffering the present effects of past discrimination because of race or national origin prohibited by Title VII of the Civil Rights Act of 1964.

By this order therefore, this Court has the final task in this suit—to determine those individuals, if any, who are entitled to relief under Paragraph 13(a) of the Consent Decree. The determination involves a three step process: 1) was there a general plan and practice of discrimination by TIME; 2) was there discrimination against a person either as an individual or

as a member of a class; and 3) what relief should be given each individual discriminatee.

A brief and general description of TIME's employee hierarchy should be given so that a discussion of any discriminatory practices can be more easily understood. Servicemen perform the most unskilled task of greasing trucks and changing tires within the yard. Mechanics and partsmen also work within the yard. Hostlers, checkers, and dockmen are responsible for servicing and loading trucks within the yard. Trucks are loaded according to size and destination. Light and heavy duty trucks deliver within a city or surrounding locale. Heavy trucks are also loaded for long distance or "line" runs. Line runs are considered the most desirable of the driving jobs because of generally higher pay and less physical loading and unloading duties. The city drivers usually have to unload their own trucks and contend with city traffic.

All categories within the trucking hierarchy are unionized. Seniority within a job category is governed by a "board"; the employee with the longest tenure within a job category being number one on the board and the most recently hired employee being the last number on the board. There is also a status within a job known as "casual." A casual employee is one who was called to work on a certain job for an indeterminate, but usually short, period of time. After a casual works for a certain period of time he is eligible to go on the job "regular": which entitles him to be put on the board. Naturally, if a layoff occurs within a job category, the employees on the bottom of the board are the first to be released. Also, the employees on the top of the board enjoy overtime and transfer options and preference in bidding on the various jobs in that category.

The United States alleges that TIME discriminates against individuals because of their race in various ways. The Government claims that TIME doesn't hire minorities for any job in a

proportionate ratio to whites; that if a black or member of another minority group is hired, he is hired for the less beneficial jobs, and that if they are hired, these minorities are discriminated against in promotions and transfers to more advantageous positions.

In support of their claim, the Government has introduced statistics and depositions as well as witness testimony at the trial.

The statistics introduced are of two types. One is a comparison of the number of a minority residing in an area with the number of that minority who actually are employed by TIME. The other is a comparison of the number of minorities at each particular job at each terminal with the number of whites at the particular job at each terminal. Both statistical tables are set out *in toto* in Appendix A of this opinion, and as a finding of fact by this Court.

The statistics are a convincing commentary regarding the claim of TIME's discriminatory practices. They show that TIME has not in the past hired minorities in proportion to the minorities available within each terminal area. Further, statistics show that minorities have simply not been allowed to engage in the more choice jobs such as line driver.

These statistics alone are sufficient to show a prima facie violation of Title VII. Statistics are relevant and carry great weight in determining whether there has been a plan and practice of discrimination. *Bing v. Roadway Express Inc.*, 444 F.2d 687 (5th Cir. 1971); *Witherspoon v. Mercury Freight Lines, Inc.*, 547 F.2d 496 (5th Cir. 1972).

The testimony from the witness chair and the depositions clearly indicate that TIME and its predecessors engaged in the following practices:

(a) Numerous qualified black and Spanish-surnamed American applicants who sought line driving jobs at the company over

the years either had their requests ignored, were given false or misleading information about requirements, opportunities, and application procedures, or were not considered and hired on the same basis that whites were considered and hired.

(b) Numerous qualified black and Spanish surnamed American employees who have sought transfer to line driving jobs at the company have either been denied the opportunity to do so, or have not been permitted to transfer on the same basis as whites.

(c) At its Nashville terminal, the company has trained whites, but not blacks, to be mechanics, partsmen and shop supervisors.

All of the evidence is ample to show by a preponderance of the evidence that T.I.M.E. D.C. and its predecessor companies were engaged in a plan and practice of discrimination in violation of Title VII of the Civil Rights Act of 1964. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Bing v. Roadway Express, Inc.*, 444 F.2d 687 (5th Cir. 1971); *Witherspoon v. Mercury Freight Lines Inc.*, 457 F.2d 496 (5th Cir. 1972); *United States v. Hayes Int'l Corp.*, 456 F.2d 112 (5th Cir. 1972).

Defendant Unions asserts that even though TIME might be guilty of discrimination that the Unions themselves have done no act which could be construed as discriminatory. The contracts between the Unions and TIME, while being neutral on their face, do, however, operate to impede the free transfer of minority groups into and within the company. "Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices," *Griggs v. Duke Power Co.*, 401 U.S. 424, 429-30 (1971). It is not the intent of this Court to order the Union to completely revise their seniority system, however it is the ruling of this Court that neither TIME nor the Unions can set up the seniority system or the collective bargaining agreements to impede the natural infiltration of minority groups into and within the more ad-

vantageous jobs through TIME's employee hierarchy and the order of the Court, hereinafter described, will enjoin the Unions from interfering with relief here granted as well as the relief ordered by this Court's decree of May 12, 1972.

Since it has been established that the defendants here are in general violation of Title VII, and TIME has engaged in a plan and practice of discrimination, the next issue is whether the individuals listed have been the victims of this discrimination.

Plaintiff's list of individuals for whom relief is sought is taken from Plaintiff's Exhibit 204, which is a list of all persons hired by TIME or its predecessor companies with a notation as to their race. The plaintiff then listed those who were members of a minority to compose Plaintiff's List of Individuals for Whom Relief is Sought. The plaintiff claims that since these people were hired during a period in which TIME was practicing a plan and pattern of discrimination, that they are members of a class affected by TIME's discriminatory practices. The Court accepts this view to the extent that all are members of an affected class. However, this Court does not hold that all members were injured individually by being within the class, or that those who were injured were all affected to the same degree. This Court, in fact, does hold that some were not injured by being a member of the class, and that those who were injured were injured in varying degrees. There are no degrees of discrimination—discrimination is discrimination, and if made on the basis of race is deplorable whatever the degree; however there *are* degrees of injury due to that discrimination—and this is important in determining the equitable relief this Court should afford these individuals.

It should be noted that with two exceptions, all individuals on the list have been awarded monetary damages as provided in the Consent Decree in Partial Resolution of Suit. It should also be noted that of the hundreds listed, this Court has specific evidence on only 41 listed individuals.

Further, the evidence in this case has been introduced to show the plan and practice of discrimination by the defendant employer aided by the defendant labor unions. The Court has no evidence showing acts of discrimination by white employees. This fact is noted because the plaintiff has suggested as one form of relief that the alleged individual discriminatees be ordered to be placed on the "board," at a better classified or higher paying classification of job with the employer; and that his date of seniority be the date that that individual first entered into the employment of the defendant company or its predecessors. This suggestion has the advantage of restoring, as nearly as possible, an individual to the position that he would have enjoyed had there never been discrimination. But it has the overriding disadvantage of placing this person in a more senior status than white employees who have been placed in that category in the meantime and this record contains no evidence of discrimination by the white employees who would be severely affected by the Government's proposal. Of course it could be argued that had the discrimination not occurred the white employee would have enjoyed the junior status; but this Court cannot overlook the fact that these white employees are not responsible for the discrimination, although they may be beneficiaries thereof, and to enforce such a harsh remedy would unduly and unnecessarily disrupt whites who have grown accustomed to and been given and earned their senior status. It is unfortunate that a remedy does not exist which would fully compensate those who have suffered discrimination. Facing such a situation, this Court must balance the equities and determine a solution that will fulfill the meaning and intent of the Act.

The Court finds that 30 members of the class have suffered severe injury because of the practice and plan of discrimination by TIME. These individuals produced the most convincing evidence of discrimination and harm resulting therefrom. A list of these individuals, a brief summary of the evidence they presented, and the relief granted each is found in Appendix B,

which is made a part of this opinion for all purposes. The highest seniority date granted any individual listed in Appendix B is July 2, 1964, the effective date of 42 U.S.C. § 2000e. Of course, if one on the list has an employment date later than July 2, 1964, then the later date will be his seniority date.

It is therefore the Order of this Court that in complying with the provisions of 13(a) of the decree of this Court heretofore entered, that the company will first place those listed on Appendix B into the position sought and that when a vacancy occurs they will be given the place in the new category and that their seniority date for all purposes including bidding, layoff, and seniority purposes will be the date shown in column 3 of Appendix B.

These persons will be placed in the various positions that are shown in column three on Appendix B and at the terminal listed in column 1 when such a vacancy in such position exists at such terminal.

There are other individuals on plaintiff's list who fall within a grey area. The evidence regarding these individuals is not sufficient to show clear and convincing specific instances of discrimination or harm resulting therefrom. The evidence does show, however, that these individuals were very possibly the objects of discrimination and that they were likely harmed by such discrimination. Because there is no specific evidence, this Court, having broad equitable power with which to fashion a remedy, holds that these individuals are entitled to openings in the jobs listed with a seniority date as of the date of the filing of this suit, the 14th day of January, 1971. A list of these individuals with a brief summary of their complaint and the relief afforded each is set out in Appendix C, which is made a part of this opinion for all purposes. It is therefore the Order of this Court that in complying with the provisions of 13(a) of the decree of this Court heretofore entered, that the company

will place these employees after those listed in Appendix B into the positions sought and that when a vacancy occurs at the terminal and in the job position shown on Appendix C, they will be given the place in the new category and that their seniority date for all purposes including bidding, layoff, and seniority purposes will be the date shown on Appendix C.

Regarding a third group, listed on Appendix D, the evidence fails to show that there was any injury or harm to them as a result of TIME's discriminatory practices. The Court is convinced that even though these people had some dealings with TIME during the period of discrimination, that they were clearly not injured by such discrimination. It is therefore the ORDER of the Court that any equitable relief claimed by these individuals be DENIED. These people are listed in Appendix D, which is made a part of this opinion for all purposes.

The remainder of the individuals on plaintiff's list (filed with the Court on June 19, 1972) have either presented no evidence of discrimination against themselves and resulting harm or are no longer in the employ of TIME. As mentioned above, all are members of a class of discriminatees; however, this Court has no evidence to show that these individuals were either harmed or not harmed individually by the discrimination to the class as a whole. It would be unjust to deny completely any relief to these individuals; however, it would also be unjust to grant relief to all when the Court has no evidence of harm individually. In balancing the equities, it is the ORDER of this Court that these individuals be entitled to openings under paragraph 13(a) of the Consent Decree before those from the general public and after those listed in Appendix B and C, and that their seniority date be the date hired under paragraph 13(a).

In implementing the relief to be ordered defendant TIME will, with the aid of the defendant Unions, mail notice by Certified Mail to each individual named on the plaintiff's list filed

June 19, 1972 and entitled "INDIVIDUALS FOR WHOM PLAINTIFF SEEKS RELIEF" except that no such notice may be mailed to those individuals listed on Appendix D. Such notification will be by Certified Mail, Return Receipt Requested, and will be deposited in the mails within sixty (60) days from the date that the order of the Court becomes final, and shall be mailed to each individual's last known address. If delivery cannot be effected by such means, no further requirement of notice shall be required of the defendants to such individuals, provided that the notice was mailed to the last known address known to any of the defendants herein. Each individual shall be notified of the relief ordered to be given to each individual, and as shown on the various appendices to this opinion, and shall further advise that the individual must accept in writing the relief offered within sixty (60) days after such notice has been mailed. Failure to accept the relief ordered in writing by the individual will relieve defendants of any further obligation to such individual under the terms of the decree to be entered.

The order of this Court will further provide that in no event will any individual be entitled to receive any of the relief provided for except and unless that individual fully meets all of the requirements of the new job category to which he is to be assigned. Further, it will be provided that each individual will retain his present date of seniority for all company-wide benefits (such as retirement and fringe benefits), although such individual will have a different date of seniority on the new "board" to which he is assigned.

The defendant TIME will be required to furnish semi-annual reports to this Court and to the United States Attorney General showing compliance and reporting and other pertinent statistical information with respect to the individuals affected by this order, and in addition to those reports required in the previous Consent Decree heretofore entered.

The attorneys in this cause are directed to confer and to submit to the Court an appropriate form of order in accordance with the requirements of this Memorandum Opinion. It is recognized that in effecting the decree herein ordered to be entered that certain procedures will be necessary in order to prevent possible resulting inequities and injustices, and it is for that reason that the Court feels that the attorneys can appropriately draft the final order in this case as herein outlined.

This Memorandum Opinion shall constitute the Court's Findings of Fact and Conclusions of Law.

The Clerk will furnish a copy hereof to each attorney.

ENTERED this 19th day of October, 1972.

/s/ HALBERT O. WOODWARD
United States District Judge

APPENDIX A

Percent of "White", "Negro" and "Other" Population in the Standard Metropolitan Statistical Area and the City at T.I.M.E. D.C.'s Terminal Locations, and the "White", "Negro" and "Other" Work Force at T.I.M.E. D.C.'s Terminals

Terminal City	SMSA White	SMSA Negro	SMSA Other	City White	City Negro	City Other	T.I.M.E. D.C. White	T.I.M.E. D.C. Negro	T.I.M.E. D.C. Other
Albany	96.31	3.28	.41	87.00	12.31	.69	96.97	0	3.03
Atlanta	77.41	22.35	.24	48.40	51.31	.29	85.63	13.17	1.20
Baltimore	75.78	23.67	.55	52.98	46.39	.63	87.50	10.00	2.50
Boston	94.52	4.61	.87	81.85	16.33	1.82	98.28	0	1.72
Buffalo	91.22	8.06	.72	78.74	20.38	.88	100.00	0	0
Chattanooga	83.48	16.37	.17	63.72	36.06	.22	92.96	7.04	0
Chicago	81.28	17.64	1.08	65.57	31.75	1.68	93.84	3.32	2.84
Cincinnati	88.73	11.00	.27	71.91	27.64	.45	93.48	6.52	0
Cleveland	83.41	16.11	.48	61.01	38.33	.66	97.14	2.86	0
Dallas	83.23	15.98	.79	74.15	24.91	.94	85.32	13.76	.92
Decatur	—	—	—	86.90	13.00	.10	100.00	0	0
Denver	94.55	4.08	1.37	89.02	9.13	1.85	90.87	5.39	3.74
Detroit	81.42	18.03	.55	55.50	43.69	.81	98.11	1.89	0
El Paso	95.82	3.08	1.10	96.38	2.58	1.04	39.39	0	60.61
Evansville	94.02	5.82	.16	92.52	7.28	.20	97.83	2.17	0
Fountain	—	—	—	—	—	—	91.67	0	8.33
Hobbs	—	—	—	90.64	7.88	1.48	100.00	0	0
Kansas City	87.40	12.05	.55	77.20	22.09	.71	96.12	.97	2.91
Knoxville	92.57	7.17	.26	86.87	12.79	.32	96.36	3.64	0
Little Rock	80.77	18.98	.25	74.48	25.28	.24	94.12	5.88	0
Los Angeles (1)	85.42	10.84	3.74	77.19	17.88	4.93	77.89	9.88	12.23
Los Angeles (2)	85.42	10.84	3.74	77.19	17.88	4.93	80.08	4.30	15.62
Louisville	87.54	12.25	.21	75.94	23.80	.26	100.00	0	0
Lubbock	91.72	7.60	.68	91.83	7.50	.67	95.77	2.82	1.41
General Office	91.72	7.60	.68	91.83	7.50	.67	95.16	2.42	2.42
Memphis	62.16	37.52	.32	60.82	38.89	.29	87.31	12.69	0
Milwaukee	91.76	7.59	.65	84.42	14.65	.93	100.00	0	0
Montreal	—	—	—	—	—	—	100.00	0	0
Nashville	81.91	17.82	.27	80.08	19.62	.30	92.78	7.22	0
New York City (1)	81.96	16.33	1.71	76.56	21.18	2.26	97.67	.78	1.55
New York City (2)	81.96	16.33	1.71	76.56	21.18	2.26	95.95	2.70	1.35
Oklahoma City	89.10	8.50	2.40	83.94	13.69	2.37	94.50	3.30	2.20
Paris	—	—	—	—	—	—	97.50	2.50	0
Philadelphia	81.88	17.52	.60	65.62	33.55	.83	97.30	2.70	0
Phoenix	94.51	3.40	2.09	93.28	4.80	1.92	89.56	3.48	6.96
Portland	96.21	2.31	1.48	92.16	5.64	2.20	97.78	.89	1.33
Ripley	—	—	—	—	—	—	100.00	0	0

Terminal City	SMSA White	SMSA Negro	SMSA Other	City White	City Negro	City Other	T.I.M.E. D.C. White	T.I.M.E. D.C. Negro	T.I.M.E. D.C. Other
Rochester	92.96	6.54	.50	82.41	16.76	.83	100.00	0	0
Sacramento	90.96	4.74	4.30	81.50	10.71	7.79	89.47	0	10.53
Salisaw	—	—	—	—	—	—	100.00	0	0
San Antonio	91.98	6.93	1.09	91.37	7.65	.98	35.30	5.88	58.82
San Francisco	82.80	10.62	6.58	71.43	13.42	15.15	81.52	4.74	13.74
Seattle	94.03	2.93	3.04	87.39	7.13	5.48	96.36	1.04	2.60
Springfield	98.11	1.58	.31	97.67	1.98	.35	100.00	0	0
Stockton	88.08	5.44	6.48	79.52	10.98	9.50	100.00	0	0
Syracuse	95.61	3.68	.71	88.04	10.84	1.12	100.00	0	0
St. Louis	83.59	16.03	.38	58.66	40.85	.49	97.87	2.13	0
Tacoma	93.04	4.50	2.46	90.76	6.75	2.49	100.00	0	0
Toledo	91.35	8.25	.40	85.73	13.79	.48	100.00	0	0
Toronto	—	—	—	—	—	—	100.00	0	0
Tucson	93.63	2.94	3.43	94.82	3.49	1.69	80.00	10.00	10.00
Tulsa	88.28	8.25	3.47	86.55	10.64	2.81	93.34	3.33	3.33
Vancouver	—	—	—	—	—	—	100.00	0	0
Vinita	—	—	—	—	—	—	81.82	0	18.18
Washington, D.C.	74.26	24.61	1.13	27.66	71.08	1.26	100.00	0	0
Winchester	—	—	—	90.94	8.93	.13	96.70	.94	2.36
Yreka	—	—	—	—	—	—	100.00	0	0
York	97.41	2.37	.22	86.53	12.96	.51	100.00	0	0

SMSA (Standard Metropolitan Statistical Area) percentages are based on the 1970 U.S. Census of Population Reports. The terminal cities with dashes in the SMSA columns have no metropolitan area figures available from the Census Bureau.
City percentages are based on the 1970 U.S. Census of Population Reports of urban places with a population of more than 10,000. Population figures for cities with populations of under 10,000 are not available from the Census Bureau at this time and therefore dashes are indicates in these columns.

Population figures for Canadian cities are not included on the chart.

T.I.M.E. D.C. employment figures are based on the total terminal employment. The percentages are computed from the March 31, 1971 printout "Personnel List," Pl. Ex. 204, furnished plaintiff by T.I.M.E. D.C., Inc., Lubbock, Texas.

Comparison of White and Minority Group Members Within Individual Job Classifications at T.I.M.E. Terminals in Major Metropolitan Areas
Hayward, California Terminal (San Francisco)

Job Category	Total	White	Negro	SSA	Am. Indian Am.	Oriental
Mechanic	6	3		2	1	
Partsman	1	1				
Serviceman	6	5	1			
City H.D. Driver	18	14		3		1
City PUD Driver	45	33	3	9		
Line Driver	31	31				
Dockman	44	31	5	8		
Hostler	10	8		1	1	

Denver, Colorado Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	51	46	2	2	1	
Partsman	6	5	1			
Serviceman	27	7	19	1		
City Heavy Duty Driver	21	19		2		
City PUD Driver	33	24	3	5	1	
Line Driver	313	311			1	1
Dockman	65	53	5	7		
Hostler	17	15		2		
Janitor	5	2	2	1		

Vernon and Montebello, California Terminals (Los Angeles) (LAX)

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	40	29	4	6	1	
Partsman	6	5	1			
Serviceman	31	16	11	4		
City Heavy Duty Driver	45	22	11	12		
City PUD Driver	74	53	7	12	2	
Line Driver	319	315		2	2	
Dockman	119	51	35	30	2	1
Hostler	12	8	4			

Vernon and Montebello, California Terminals (Los Angeles) (LOS)

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	9	8		1		
Partsman	1	1				
Serviceman	7	2		5		
City Heavy Duty Driver	30	21	3	5		1
City PUD Driver	48	36	3	9		
Line Driver	55	55				
Dockman	47	30	5	10	1	1
Hostler	2			2		

Nashville, Tennessee Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	30	28	2			
Partsman	3	3				
Serviceman	25	9	16			
City PUD Driver	31	31				
Line Drivers	74	74				
Dockman	70	70				
Hostler	6	6				

Atlanta, Georgia Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	9	9				
City PUD Driver	31	20	11			
Line Driver	57	57				
Dockman	31	23	8			
Hostler	6	4	2			

Chicago, Illinois Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	26	25	1			
Partsman	1	1				
City Heavy Duty Driver	83	78	4		1	
Line Driver	97	97				
Dockman	83	75		7	1	
Hostler	12	12				

Oklahoma City, Oklahoma Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	43	40	1		2	
Partsman	5	4		1		
Serviceman	23	18	3	2		
City PUD Driver	20	20				
Line Driver	103	101	2			
Dockman	38	35	2		1	
Hostler	2	2				

Dallas (Irving), Texas Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
City PUD Driver	29	22	7			
Line Driver	20	20				
Dock Foreman	5	5				
Dockman	41	32	8	1		

San Antonio, Texas Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
City PUD Driver	13	3	1	9		
Dockman	1			1		

Memphis, Tennessee Terminal

Job Category	Total	White	Negro	SSA	Am. Indian	Oriental
Mechanic	17	16	1			
City PUD Driver	35	24	11			
Line Driver	104	101	3			
Dockman	112	89	23			
Hostler	8	6	2			

APPENDIX B

The following individuals are those which the evidence clearly shows were the objects of discrimination in the hiring and promotional practices of defendant T.I.M.E. D.C. Included here is a brief description of specific acts of discrimination and the equitable relief given each by this Court.

Name (Terminal and Race)	Complaint	Relief
1) Edgar Cornelius Rudison (Vernon, Negro)	1) Has been a city driver with T.I.M.E. for 22 years. Asked for a line job 13 years ago and has always been told that T.I.M.E. D.C. had plenty of line drivers.	1) Plaintiff* to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
2) Roy F. Patton (Vernon, Negro)	2) Has been a city driver with T.I.M.E. D.C. for 14 years. Has asked for a line job two times but was refused or told that he would have to go on the extra board.	2) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
3) Jose de Ramirez Almarez (Montebello, Mexican American)	3) Applied for line job in 1956 but was refused because of his race. Has been a city and heavy duty driver since 1957.	3) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
4) John Passi (Montebello, Polynesian)	4) Started with T.I.M.E. as a heavy duty driver in 1965. Asked about line job but was told he didn't have enough experience even though he had driven in Korea.	4) Plaintiff to be offered the opportunity to fill line driver job on basis of September, 1965 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
5) James A. Floyd (Vernon, Negro)	5) Had 21 years driving experience before going with T.I.M.E. D.C. in 1961. When he asked about a line job in 1963 the personnel manager simply walked away.	5) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.

Name (Terminal and Race)	Complaint	Relief
6) Marvin R. Vestal (Vernon, Negro)	6) Has been employed by T.I.M.E. D.C. on a "casual" basis. Has applied with T.I.M.E. for line job on three occasions and was refused for various reasons.	6) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
7) Veris Sims (Denver, Negro)	7) Started with T.I.M.E. in 1955 as a serviceman. Asked about a line job in 1964 and was told that he couldn't be bonded and that no whites would drive with him.	7) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
8) Filberto Trujillo (Denver, Mexican American)	8) Applied with T.I.M.E. for line job when he started in 1965 and again in 1967. Refused because of his race.	8) Plaintiff to be offered the opportunity to fill line driver job on basis of July 15, 1965 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
9) James H. Walker (Memphis, Negro)	9) Started in 1948 as city driver with T.I.M.E. Applied in 1957 for line job but was refused because of his race.	9) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
10) J. L. McNeal (Memphis, Negro)	10) Started with T.I.M.E. in 1948 as a city driver. Asked for line job in 1956 but was told that no line drivers were being hired.	10) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
11) Arthur L. Thornton (Memphis, Negro)	11) Started with T.I.M.E. in 1948 as a city driver. Applied for line job from times between 1956 and 1969 and was refused because of his race. Was eventually hired as line driver in 1969.	11) Defendant is to allow Thornton to use July 2, 1964 as his seniority date in the job of line driver for all purposes, including bidding and layoff.
12) Lee Francis Jones 13) Thomas Richard Johnson 14) Henry L. Davis 15) Raymond L. Rucker 16) Levi Grant 17) James A. Keeling (Nashville, Negroes)	All are servicemen in Nashville who started prior to 1964 and who have been denied advancement due to their race.	[Defendant to provide [proper training to qualify [these individuals to work as [dockman, partsman, or me-[chanic; and if qualified that [they be given seniority date [of July 2, 1964 for all pur-[poses, including bidding and [layoff.

Name (Terminal and Race)	Complaint	Relief
18) Joe Amos (Atlanta, Negro)	18) Applied in 1957 and 1966 for extra line runs. In 1966 all extra line runs were eliminated to avoid giving the runs to Negroes.	18) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
19) Theodus Perry (Atlanta, Negro)	19) Started as heavy duty driver with T.I.M.E. in 1964, applied for extra line runs in 1966 but was refused.	19) Plaintiff to be offered the opportunity to fill line driver job on basis of July 1, 1966 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
20) John J. Calhoun (Atlanta, Negro)	20) Started in 1956 as a heavy duty driver. Asked for extra line runs in 1966; however company cancelled extra line runs instead of hiring Negroes.	20) Plaintiff to be offered the opportunity to fill line driver job on basis of July 1, 1966 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
21) Thomas M. White (Los Angeles, Negro)	21) Started as city driver in 1946. Applied for line job in 1956 and numerous times thereafter. No reason was given for his refusal.	21) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
22) Grady Amos (Atlanta, Negro)	22) Started with T.I.M.E. in 1956 as a city driver. Asked for extra line runs in 1957 and regular line job in 1965. Was told he would get poor accommodations.	22) Plaintiff to be offered the opportunity to fill line driver job on basis of July 2, 1964 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
23) David E. O'Neal (Vernon, Negro)	23) Started with T.I.M.E. in 1961. Has a college degree, however failed to put this on his application so he could get a laboring job. Applied for salesman job in 1965 but was refused because of his race.	23) Defendant will provide normal training and probationary period for salesman job; and if qualified will offer first salesman position available with January 1, 1966 as seniority date in that job for all purposes, including bidding and layoff.
24) Otis A. Zeno (Hayward, Negro)	24) Started with T.I.M.E. in 1966 as a dockman. Became city driver in 1967; however has been assigned defective and unsafe equipment and is the only driver who does not have equipment assigned to him permanently.	24) Defendant shall assign this plaintiff a truck-tractor of a condition equivalent to those assigned to other city drivers who have assigned routes.

Name (Terminal and Race)	Complaint	Relief
25) Robert T. Jones (Memphis, Negro)	25) Became a regular city driver with T.I.M.E. in 1953. Applied for line job in August of 1970. Was later offered line job but did not take it.	25) Plaintiff to be offered the opportunity to fill line driver job on basis of August, 1970 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
26) Clayborn Moman (Memphis, Negro)	26) Started in 1964 as a hostler and applied for a line job a few months thereafter. Now is a city driver. Was offered a line job in 1969 but refused it.	26) Plaintiff to be offered the opportunity to fill line driver job on basis of January 1, 1966 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
27) Robert McCrimmon (Dallas, Negro)	27) Employed by T.I.M.E. in 1969. Asked for a line job in 1970 but was told it was a company policy not to transfer from city to line.	27) Plaintiff to be offered the opportunity to fill line driver job on basis of July 1, 1970 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
28) Richard Stinson (Oakland, Negro)	28) Applied for line job in 1969 but was told that T.I.M.E. didn't have enough equipment. Tried again in 1971. Has had extensive driving experience with other companies.	28) Plaintiff to be offered the opportunity to fill line driver job on basis of July 1, 1969 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.
29) Iris G. Darden Hix (Los Angeles, Negro)	29) Worked for T.I.M.E. as billing clerk for 3 weeks in 1966. Was fired because her work was too slow, however the evidence clearly shows that she was the object of blatant discrimination.	29) Plaintiff to be offered the opportunity to fill billing clerk job on basis of August 1, 1966 seniority date, and if found qualified, to take her seniority to that job for all purposes, including bidding and layoff.
30) Virgil A. Hardin (Montebello, Negro)	30) Started with T.I.M.E. in October of 1968. Applied for local job because he was told not to apply for a line job.	30) Plaintiff to be offered the opportunity to fill line driver job on basis of October 1, 1968 seniority date, and if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.

* Plaintiff used throughout this Appendix refers to the individual for whom the Government is seeking relief.

APPENDIX C

The evidence in respect to the following individuals is not sufficient to show clear and convincing specific instances of discrimination. The evidence does show, however, that these individuals were very possibly the objects of discrimination or that discrimination in their case was likely. Because there is no specific evidence, this Court, having broad equitable powers with which to fashion a remedy, holds that these individuals are entitled to openings in the jobs listed with a seniority date as of the date of the filing of this suit the 14th of January, 1971.

Name (Terminal and Race)	Complaint	Job
1) Carlton King (Hayward, Negro)	1) Started in 1962 with T.I.M.E. as a heavy duty driver. There were four incidents which his foreman "threatened" to fire him, however he was never fired. Has never asked for a line job.	1) Line driver
2) Foster Barnes (San Antonio, Negro)	2) Has only worked for T.I.M.E. as "casual" and on two short occasions as a regular. His complaint is that he has never been hired by T.I.M.E. as a regular or worked regular status long enough to avoid being laid off; however he has not been hired as a regular by any other San Antonio trucking firm.	2) City driver
3) George W. Sullivan (Hayward, Negro)	3) Started in 1968 with T.I.M.E. as a dock worker. Became city driver in 1970. Has not asked for line job.	3) Line job
4) Ophenus Barber (Dallas, Negro)	4) First hired by T.I.M.E. as a city driver in 1967. Has never asked for a line job.	4) Line driver

APPENDIX D

The Court finds that the evidence regarding the following individuals either shows no discrimination or that there was any harm as a result of T.I.M.E.'s hiring practice.

1) Earmitt Ceophalus Jones (Denver, Negro).

2) Jerome Pastwick (Denver, white).

3) Fontaine E. Yount (Memphis, white).

4) W. G. Gately (Memphis, white).

5) James Wallace, Jr. (Nashville, Negro).

6) Harrell Holley (Dallas, Negro).

7) Michael Arriga (Dallas, Mexican-American).

OPINION
Of the District Court for the Northern District of Texas
December 6, 1972; 6 F.E.P. Cases 703

In the United States District Court
For the Northern District of Texas
Lubbock Division

United States of America, Plaintiff, v. T.I.M.E.-DC, Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO, Defendants.	Civil Action No. 5-868.
United States of America, Plaintiff, v. T.I.M.E. Freight, Inc. (now T.I.M.E.-DC, Inc.) and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Defendants.	Civil Action No. 5-897.

Supplemental Opinion

The Court having received inquiries from the parties regarding the prior Opinion of October 19, 1972, and upon further

reconsideration of such Opinion it is the Order of the Court that the following be supplemental thereto:

I

That Appendix D be removed from the October 19th Opinion and that the names heretofore listed in such appendix be treated and included as those individuals mentioned on page 11, *i.e.*, the remainder group entitled to openings under Paragraph 13(a) of the Consent Decree before those from the general public and after those listed in Appendices B and C, and their seniority date be the date hired under Paragraph 13(a).

II

It is the Order of the Court that the 16 individuals listed in "Attachment A" of the government's November 2, 1972, letter be treated and included as those individuals mentioned on page 11 of the October 19, 1972 Opinion, *i.e.*, those entitled to openings under Paragraph 13(a) of the Consent Decree before those from the general public and after those listed in Appendices B and C, and their seniority date be the date hired under Paragraph 13(a). Such "Attachment A" above referred to is attached to this Supplemental Opinion as "Attachment A."

III

Since Appendix D has been removed from the October 19, 1972 Opinion, it is the Order of the Court that those listed in "Attachment B" of the government's letters of November 2, 1972, as well as Tereso J. Gonzales, be treated and included as those individuals mentioned on page 11 of the October 19, 1972 Opinion, *i.e.*, those entitled to openings under Paragraph 13(a) of the Consent Decree before those from the general public and after those listed in Appendices B and C, and their seniority date be the date hired under Paragraph 13(a). Such "Attachment B" above referred to is attached to this Supplemental Opinion as "Attachment B."

IV

If an employee of T.I.M.E. is laid off such laid off employee shall have a preference to fill such laid off position when it again becomes open without competition from the individuals granted relief in this case. However, if such layoff continues for three consecutive years the position will be deemed as "vacant" with the right of all concerned to compete for such position, using their respective seniority dates, including those ordered by the decrees of this Court.

V

Subject to paragraph IV above and where a vacancy occurs, the individuals given relief hereunder shall have preference over employees at other terminals in filling such vacancy at the terminal shown by their respective names in Appendices B and C of the order of this Court, even though such individual's date of seniority is junior to that of another employee located at another terminal. This preference over employees at other terminals, even though such other employees may have seniority, is to be given regardless of the provisions of any agreements to the contrary such as the Southern Conference area over-the-road Supplemental Agreement. If an individual afforded relief hereunder desires to bid on a vacancy at a terminal other than that shown by his name in such appendices, such individual shall be permitted to bid on an equal basis with others, using as a seniority the date granted for seniority purposes by the Court in this case.

VI

The effective date of Title VII of the Civil Rights Act of 1964 is July 2, 1965. This date should be substituted for July 2, 1964 in the October 19th Opinion as the seniority date for certain individuals.

VII

The reporting requirements mentioned at the bottom of page 12 of the October 19th Opinion will terminate three (3) years subsequent to final entry of judgment in this cause; provided, however, that such time may be extended upon good cause shown.

VIII

It is ordered that TIME shall first fill the vacancies in accordance with Paragraph 13(a) of the Consent Decree with those individuals listed in Appendices B and C as well as the others referred to on page 11 of the October 19th, 1972 Opinion and those included in such category by the above provisions of this Supplemental Opinion. After all such individuals named in these appendices and those others included in the category defined on page 11 of the original Opinion have been given a full and fair opportunity to fill such vacancies in accordance with the orders of this Court, then Paragraph 13(a) will be deemed to have been complied with and the provisions of Paragraph 13(b) of the Consent Decree will then become operative.

In the event an individual, other than those listed on Appendices B and C, given relief hereunder, wishes to compete and bid on a vacancy, such individual is given preference over those other applicants not then in the employ of TIME and shall also be given preference over other TIME employees who have no seniority in the category where the vacancy occurs. Provided,

however, that in all cases where a vacancy is to be filled, that the qualification of an applicant shall be governed by the terms of Paragraphs 5-12, inclusive, of the Consent Decree.

IX

The attorneys shall forthwith confer and submit a proposed form of final and formal judgment and decree to be entered by the Court. In preparing such formal decree the Court suggests to the attorneys that it may be desirable that each individual be listed and named including those referred to in the category on the bottom of page 11 of the October 19th, 1972 Opinion.

X

As a further clarification of the second full paragraph on page 11 of the October 19th, 1972 Decree, it is here specified that the term, on page 11 as well as where used in this Opinion, "be the date hired under Paragraph 13(a)" shall mean that date that such employee enters into the employment in the category which he applies for under the rights given him by this Court, even though he might have an earlier seniority date in his then-previous category of his employment by TIME.

The Clerk will furnish a copy hereof to each attorney.

ENTERED this 6th day of December, 1972.

/s/ HALBERT O. WOODWARD
United States District Judge

ATTACHMENT B

Name
R. D. Campbell
B. B. Hodges
O. Holcomb
A. C. Taylor
J. L. Benefield
J. L. Boudreaux
W. G. Bryan
H. S. Holliday
T. Luttrell
O. McElroy
L. E. Nichols
J. W. O'Neill
O. L. Shaw
P. C. Thomas
J. Williamson
B. Wilbanks
H. Kelley
G. Jacques

DECREE
In Partial Resolution of Suit—Northern District of Texas, May 12, 1972; Unreported

In the United States District Court for the
Northern District of Texas
Lubbock Division

United States of America, Plaintiff, vs. T.I.M.E. D.C., Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO, Defendants,	Civil Action No. 5-868
United States of America, Plaintiff, vs. T.I.M.E. Freight, Inc. (now known as T.I.M.E. D.C., Inc.), and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Defendants.	Civil Action No. 5-897

Decree in Partial Resolution of Suit

The United States of America commenced Civil Action No. 5-868 in this Court on January 14, 1971. Civil Action No.

5-897, originally commenced by the United States in the Federal District Court for the Middle District of Tennessee, Nashville Division, on May 15, 1968, was consolidated with Civil Action No. 5-868 in this Court on April 30, 1971. The United States alleged that the defendants T.I.M.E. D.C., Inc. (hereinafter called T.I.M.E. D.C.), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America were engaged in a pattern and practice of discrimination in employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*. The International Association of Machinists and Aerospace Workers, AFL-CIO was joined as a defendant in Civil Action No. 5-868 on April 21, 1971. Trial on the merits in these actions began on May 3, 1972 and the parties have presented evidence to the Court.

This Court has jurisdiction of the parties and of the subject matter of this action. This Order, being issued with the consent of the defendant T.I.M.E. D.C., shall not constitute an adjudication or finding on the merits of the case and shall in no manner be construed as an admission by T.I.M.E. D.C. of any violation of said Title VII.

It is therefore Ordered, Adjudged and Decreed that:

Employee Recruitment

1. T.I.M.E. D.C. shall undertake an employee recruiting program aimed at the black and Spanish-surnamed American communities in each city where T.I.M.E. D.C. maintains a terminal or other facility at which it employs personnel. Within 45 days of the date of this Decree, T.I.M.E. D.C. shall contact organizations in the black and Spanish-surnamed American communities, such as the Urban League and the American G.I.

Forum, and shall also contact local job training organizations. T.I.M.E. D.C. shall inform each such organization that it desires to hire qualified black and Spanish-surnamed American employees and that it will contact the organization whenever job vacancies ocur. T.I.M.E. D.C. shall give each organization a statement setting forth the minimum qualifications for each job classification and a copy of the company's equal employment opportunity statement. Thereafter, whenever new employees are being hired for any job classification at a T.I.M.E. D.C. terminal, the terminal manager or his designee shall notify said black and Spanish-surnamed American organizations and job training organizations immediately upon determining that job vacancies exist, in order to give said organizations an opportunity to refer qualified applicants.

If such contacts fail to develop an adequate number of qualified black and Spanish-surnamed American applicants for each job classification at a particular terminal or other facility, T.I.M.E. D.C. shall undertake an advertising program in newspapers or on radio stations in that city directed to and having general circulation in the black and Spanish-surnamed American communities.

2. T.I.M.E. D.C. shall take applications from all blacks and Spanish-surnamed Americans who inquire about employment, regardless of whether job vacancies exist. T.I.M.E. D.C. shall keep such applications in a current file for at least four months. When job vacancies occur, T.I.M.E. D.C. shall notify each black and Spanish-surnamed American applicant on the current list for the job to be filled at least three days before it is filled. T.I.M.E. D.C. shall inform each such black and Spanish-surnamed American applicant that he may renew his application every four months in person or by letter.

3. Each T.I.M.E. D.C. terminal and facility shall maintain, during the period of this Decree, the records listed below. Such

records shall be made available to plaintiff or its designee for inspection and copying upon written request.

a. A list of minority community organizations and job training organizations contacted, showing the date of each contact, persons contacted, name and position of the T.I.M.E. D.C. employee making the contact and the nature of the contact.

b. All job applications. The company shall note on each application whether the applicant is white, black, Spanish-surnamed American, American Indian or Oriental.

c. Logs showing by name, race or national origin and date all new hires, job assignments, promotions within a job classification, transfers between job classifications, terminations within a probationary period on the job and dismissals.

d. Such other records as are set forth elsewhere in this Decree, *e.g.*, new hires, job assignments, etc.

4. T.I.M.E. D.C. shall, during the period of this Decree, submit quarterly reports to the Court and the plaintiff or its designee showing, by race or national origin for each job classification at each terminal or other facility, the number of persons employed at the beginning of the period, job applicants, new hires, promotions within job classifications, transfers between job classifications, terminations within a probationary period on the job and dismissals.

Qualifications for Employment

5. The qualifications for city driving and road driving positions shall be those set forth in the Department of Transportation's Motor Carrier Safety Regulations, Title 49, Part 391, Sec-

tions 391.11 and 391.15. No black or Spanish-surnamed American applicant for a road driving position who meets these qualifications shall be deemed insufficiently experienced for that position if he has the equivalent of two years experience driving equipment comparable to that to be operated on the job. In determining equivalence, T.I.M.E. D.C. shall consider such factors as military driving experience and graduation from a truck driving school.

6. Applicants for the position of dockman, mechanic helper, mechanic apprentice and serviceman shall not be required to have any prior experience in the position sought or in the trucking industry. Applicants for the position of diesel, auto or trailer mechanic must have some journeyman experience, or be a graduate of a recognized mechanic training school, unless the company desires to train a person for the job.

7. In evaluating the qualifications of applicants for salesman positions, the company shall give consideration to sales experience acquired in areas other than the trucking industry.

8. T.I.M.E. D.C. may continue to require applicants for all positions except office and clerical to pass the standard Department of Transportation physical examination.

9. Applicants for office and clerical positions may be required to pass objective, practical tests which measure the skills and aptitudes which they will need on the job sought. Practical tests are exemplified by typing, shorthand and office machine tests.

10. No applicant shall be disqualified for employment solely because he has an arrest record involving no convictions or does not have a high school diploma or the equivalent, unless the job reasonably requires a high school diploma.

11. Before T.I.M.E. D.C. imposes more stringent qualifications than those listed in paragraphs 5, 6, 7, 8, 9 and 10 above,

it shall give plaintiff written notice of the intended changes and the reasons therefore at least 45 days before such qualifications are imposed. T.I.M.E. D.C. may not give any general intelligence or aptitude test to minority employees or applicants which has not been validated in accordance with the provisions set forth in the Equal Employment Opportunity Commission's *Guidelines on Employee Selection Procedures*, 35 F.R. 12333, et seq., 29 C.F.R. §1607.1 to 1607.14.

12. T.I.M.E. D.C. may continue to give the Department of Transportation written safety test to all applicants; however, passing the test shall not be a qualification for employment unless the Department of Transportation revises its Motor Carrier Safety Regulations, Title 49, Part 391 to so provide.

New Hires

13. All job vacancies at T.I.M.E. D.C. terminals and other facilities at which it employs personnel shall be filled in the following sequence:

(a) By those persons who may be found by the Court, if any, to be individual or class discriminatees suffering the present effects of past discrimination because of race or national origin prohibited by Title VII of the Civil Rights Act of 1964.

(b) By any other persons. Subject to the availability of qualified black and Spanish-surnamed American applicants, T.I.M.E. D.C. shall hire or may transfer other persons in addition to those in paragraph (a) above in the ratio of at least one black or one Spanish-surnamed American for each white hired or transferred in vacancies in each job classification at each of its terminals and facilities until the number of blacks and Spanish-surnamed Americans in each job classification at each terminal and facility is equal to the percentage of blacks and Spanish-surnamed Americans in the population of the city (or Standard Metro-

politan Statistical Area, if the city in which the terminal or facility is located is in close proximity to a much larger city) where the terminal or facility is located. When T.I.M.E. D.C. reaches either the city or Standard Metropolitan Statistical Area percentage, whichever is applicable, for either blacks or Spanish-surnamed Americans, the company shall then hire one black or one Spanish-surnamed American, depending on which said minority percentage has not yet been attained, for each white hired, to the extent that qualified applicants from that said minority are available, until said minority percentage is equal to the percentage of that minority in the city or Standard Metropolitan Statistical Area, whichever is applicable. The percentages shall be based on the "U.S. Bureau of the Census General Population Characteristics, Final Report PC (1-B)" for the 1970 Census, as supplemented, unless T.I.M.E. D.C. shows that any percentages contained therein are not substantially reflective of the black or Spanish-surnamed American work force figures for a given city. The plaintiff shall provide T.I.M.E. D.C. with a copy of said report or reports as soon as they become available.

14. T.I.M.E. D.C. shall use its best efforts to hire casuals and summer employees in the same ratio in which it hires reguiar employees, but casuals and summer employees shall not be counted in computing the ratio set forth in paragraph 13 above.

Back Pay

15. T.I.M.E. D.C. shall furnish the sum of eighty-nine thousand, five hundred dollars ($89,500) in full settlement of its alleged obligation to provide monetary compensation to alleged individual and class discriminatees in these actions. Any alleged discriminatees accepting a designated portion of

said settlement shall sign a release stating that said designated portion is accepted in full settlement of all claims for monetary compensation against T.I.M.E. D.C. or a predecessor corporation, based on alleged discriminatory acts because of race or national origin occurring prior to the date such release is signed. The signing of such release by an alleged discriminatee shall not, however, constitute a waiver of any rights other than monetary compensation against T.I.M.E. D.C. or a predecessor corporation which may have accrued to the alleged discriminatee. Within 30 days from the date of the entry of this Decree, plaintiff shall file with the Court and provide to T.I.M.E. D.C. a list of each alleged individual and class discriminatee and the designated portion of said settlement which will be offered to each alleged discriminatee, provided that the maximum payment for each alleged discriminatee shall not exceed fifteen hundred dollars ($1,500). Said list shall become a part of this Decree as if fully incorporated herein. In the event an alleged discriminatee does not accept the portion designated for him, said portion shall be retained by T.I.M.E. D.C.

Costs

16. T.I.M.E. D.C. shall pay plaintiff's costs of the depositions taken by plaintiff in these actions prior to the date of this Decree, upon presentation of official receipts for these costs to T.I.M.E. D.C. by plaintiff, up to a maximum of five thousand dollars ($5,000).

Retention of Jurisdiction

17. The Court retains jurisdiction of these actions for such further relief or other orders as may be appropriate. At any time after three years subsequent to the date of entry of this

Decree, the defendant T.I.M.E. D.C. may move the Court, on due notice, for dissolution of this Decree.

Entered this 12th day of May, 1972.

/s/ HALBERT O. WOODWARD
United States District Judge

By Consent:

/s/ WILLIAM B. FENTON
Attorney for Plaintiff,
United States of America

/s/ ROBERT D. SCHULER
Attorney for Defendant,
T.I.M.E. D.C., Inc.

"FINAL ORDER"
Of the District Court for the Northern District of Texas
March 2, 1973; Unreported

In the United States District Court for the
Northern District of Texas
Lubbock Division

United States of America,
Plaintiff,
v.
T.I.M.E. D.C., Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO,
Defendants.
Civil Action No. 5-868

United States of America,
Plaintiff,
v.
T.I.M.E. Freight, Inc., (now known as T.I.M.E. D.C., Inc.), and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,
Defendants.
Civil Action No. 5-897

Final Order

These actions having come on for trial before the Court, and a Decree in Partial Resolution of Suit having been entered by

consent between plaintiff and defendant T.I.M.E. D.C. on May 12, 1972, which decree provided methods of employee recruitment, defined qualifications for employment, specified the sequence in which job vacancies should be filled, provided back pay to alleged individual and class discriminatees in these actions, required defendant T.I.M.E. D.C. to pay costs of the depositions taken by plaintiff up to a specified amount, and retained jurisdiction in this Court for such other relief as was shown to be appropriate; and the Court thereafter having considered the entire record and the briefs and arguments of counsel, and having determined the remaining issues in the case as recorded in the Court's Memorandum Opinions of October 19, 1972 and December 6, 1972, respectively, it is hereby Ordered, Adjudged and Decreed:

1. Defendants T.I.M.E. D.C., Inc. (hereinafter T.I.M.E.), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter the Unions), their officers, agents, employees, successors and all persons in active concert or participation with them or with any of them are permanently enjoined from engaging in any act or practice at any of T.I.M.E.'s facilities which has the purpose or the effect of discriminating against any individual because of his race or national origin.

A. **General Provisions**

2. The individuals given relief by this Order, and the relief each is entitled to, are set forth in Appendices A, B and C of this Order, which Appendices are hereby made a part hereof for all purposes. With respect to the individuals given relief by this Order, the following general provisions shall apply.

3. Defendant T.I.M.E. will, with the aid of the defendant Unions, mail notice by Certified Mail to each individual. Such

notification will be by Certified Mail, Return Receipt Requested, and will be deposited in the mails within sixty (60) days from the date of the entry of this Order, and shall be mailed to each individual's last known address. If delivery cannot be affected by such means, no further requirement of notice shall be required of the defendants to such individuals, provided that the notice was mailed to the last address known to any of the defendants herein. Each individual shall be notified of the relief to be given to him, as set forth elsewhere in this Order, and each individual shall further be advised that he must accept in writing the relief offered within sixty (60) days after the notice is mailed to him. This means that the acceptance must be postmarked within 60 days after the notice is mailed to him. Failure by the individual to accept in writing the relief ordered for him will relieve defendants of any further obligation to such individual under the terms of this Order.

4. In no event will any individual be entitled to receive any of the relief provided for in this Order except and unless that individual fully meets all of the requirements of the new job category. The requirements of the job categories shall be objective ones and shall follow those set out in paragraphs 5 through 12 of the Decree in Partial Resolution of Suit, entered in these actions on May 12, 1972. However, T.I.M.E. shall be required to provide reasonable training to qualify those servicemen at the Nashville terminal set forth in Appendix A for the jobs of dockman, partsman or mechanic.

5. All individuals who are given an opportunity to transfer to a line driving job or a city driving job pursuant to this Order shall be entitled to demonstrate their driving skill to qualify for such a job when the job becomes available. They shall be allowed a reasonable opportunity if they desire to familiarize themselves with company equipment prior to demonstrating their driving skills.

6. T.I.M.E. may continue to use its driving performance tests in determining qualifications. However, if any individual given relief who fails a driving test can demonstrate two years of driving experience on the type of equipment for which he is being tested, the individual shall be entitled to retake the test if he desires in the presence of a neutral person agreed on by the individual and T.I.M.E.

7. An individual who transfers to another job pursuant to this Order shall have a 30 day probationary period during which he shall have the right to return to his former job without loss of seniority if he does not wish to stay in his new job, or if he cannot reasonably meet objective standards for the new job. This shall not prevent T.I.M.E. from imposing normal discipline, including discharge for reasonable cause. Such a return will relieve the defendants of any further obligation to such individual under the terms of this Order.

8. When vacancies occur in jobs which the individuals are eligible to transfer or otherwise fill under this Order, T.I.M.E. shall contact those individuals who have given the company written notice of their intention to accept the relief given them by this Order, in the sequence in which these individuals are entitled to relief pursuant to this Order. If two or more individuals in the same class of discriminatees are eligible to qualify for the same vacancy, the individual with the earliest company seniority date will be offered the first opportunity to qualify for the vacancy. As between former applicants of T.I.M.E. in the same class of discriminatees eligible to qualify for the same vacancy, the applicant who formerly applied the earliest at the company will be offered the first opportunity to qualify for the vacancy. With respect to those individuals in Appendix C, present employees of T.I.M.E. shall have preference over non-employees in qualifying for a vacancy. If any individual does not accept an opportunity to transfer to or otherwise fill a vacancy

in a job offered him pursuant to this Order at the terminal where he is employed, or if not employed by the company at the terminal where he applied for a job, except for illness, he shall be deemed to have waived his right to that job under this Order. After indicating an interest in a particular job, if an individual who is an employee of T.I.M.E. quits or is finally terminated for cause before accepting an actual vacancy, he shall lose all rights under this Order. In addition, any individual employee of T.I.M.E. on Appendix A, B or C who is finally terminated for cause prior to notification of transfer opportunities set out herein shall also be deemed to lose all rights under this Order.

9(a). A "vacancy" as used in this Order, shall include any opening which is caused by the transfer or promotion to a position outside the bargaining unit, death, resignation or final discharge of an incumbent, or by an increase in operations or business where, ordinarily, additional employees would be put to work. A vacancy shall not exist where there are laid off employees on the seniority roster where the opening occurs. Such laid off employees shall have a preference to fill such laid off positions when these again become open without competition from the individuals granted relief in this case. However, if such layoff continues for three consecutive years the position will be deemed as "vacant" with the right of all concerned to compete for the position, using their respective seniority dates, including those provided for in this Order.

(b). A vacancy shall not exist where employees move to another terminal pursuant to a bona fide change of operations; provided that, in such instances, the rights of individuals given relief herein in the form of an opportunity to fill future vacancies in a particular job with specified seniority shall also transfer between those terminals involved in the change of operations, and such individuals shall compete for vacancies with other discriminatees, if any, at the new terminal, on the basis of the specified seniority which they receive herein.

10. Subject to paragraph 9 above and where a vacancy occurs, the individuals given relief by and named in Appendices A and B of this Order shall have preference over employees at other terminals in filling such vacancy at the terminal shown by their respective names in Appendices A and B of this Order, even though such individual's date of seniority is junior to that of another employee located at another terminal. This preference over employees at other terminals, even though such other employees may have seniority, is to be given regardless of any agreements to the contrary such as the Southern Conference Area Over-the-Road Supplemental Agreement.

11. A line driver domiciled at a terminal covered by the Southern Conference Area Over-the-Road Supplemental Agreement may, if he is laid off, continue to exercise his present right to "bump" (displace) a line driver junior to him at another terminal where there is no present opening at the other terminal. Such an individual shall also continue to exercise his present right of recall to his "home" terminal when such a position again becomes open, without competition from the individuals granted relief in this case, as set forth in Paragraph 9(a) above. However, when an opening in a line driver job subsequently occurs at the terminal where the bump took place, individuals given relief at that terminal by this Order will be entitled to compete for that opening on the basis of the seniority relief given them herein against any line driver who may have been laid off as a result of the bump.

12. Individuals at terminals covered by the Southern Conference Area Over-the-Road Supplemental Agreement afforded relief hereunder in the form of an opportunity to fill a vacancy in a line driver job shall be permitted to bid on vacancies in line driver jobs at other terminals of the company covered by the Agreement on an equal basis with others, using as a seniority date the date granted them for seniority purposes by this Order; provided, however, that individuals afforded relief hereunder at

the terminal where the vacancy occurs shall first be permitted to qualify for the vacancy. Defendant T.I.M.E. may require that such individuals inform the company in writing if they desire to be notified of and considered for vacancies in line driver jobs at such other terminals and if T.I.M.E. does implement this requirement, it shall inform such individuals of those terminals covered by the Southern Conference Agreement where line drivers are domiciled.

13. Individuals at the Montebello and Vernon, California (Los Angeles) terminals of the company afforded relief hereunder in the form of an opportunity to fill a vacancy in a line driver job shall be permitted to bid on vacancies in line driver jobs at the other of these two terminals on an equal basis with others, using as a seniority date the date granted them for seniority purposes by this Order; provided, however, that individuals afforded relief hereunder at the terminal where the vacancy occurs shall first be permitted to qualify for the vacancy.

14. Each individual who transfers to another job pursuant to this Order will retain for all company-wide fringe benefits the seniority date he presently uses for such purposes, even though such individual may have a different date of seniority on the new seniority roster to which he is assigned for purposes of job bidding and layoff protection.

15. Any of the individuals given relief in Appendix C hereto who have already moved to a job to which they are given an opportunity to move by this Order shall retain their present seniority date in that job.

B. **Individuals Given Relief**

In complying with the provisions of paragraph 13(a) of the Decree in Partial Resolution of Suit, entered in these actions on May 12, 1972, which Decree is attached hereto as Appendix

D and hereby made a part hereof for all purposes, and subject to the foregoing paragraphs of this Order, T.I.M.E. will proceed to fill vacancies in the following sequence:

16. T.I.M.E. will first offer to those individuals in column 1 of Appendix A hereto vacancies in the jobs set forth in column 3, on the basis of the seniority relief therein ordered, at the terminal listed in column 2.

17. T.I.M.E. will next offer to those individuals in column 1 of Appendix B hereto vacancies in the jobs set forth in column 3, on the basis of the seniority relief therein ordered, at the terminal listed in column 2.

18. T.I.M.E. will next offer to those individuals in column 1 of Appendix C hereto vacancies in the jobs set forth in column 3, with unit seniority in such jobs as of the date they enter into employment in such jobs, at the terminal listed in column 2. Provided, however, that this preference which individuals on Appendix C enjoy over the general public is not a preference over fellow employees of T.I.M.E. Individuals on Appendix C will compete for vacancies with their fellow employees at the specified terminals on the basis of company seniority.

19. After all such individuals named in Appendices A, B and C have been given a full and fair opportunity to fill such vacancies in accordance with this Order, then paragraph 13(a) of the Decree in Partial Resolution of Suit will be deemed to have been complied with and the provisions of paragraph 13(b) of said Decree will then become operative.

20. The Court is informed by defendant T.I.M.E. that T.I.M.E. has already offered those individuals in Appendix C employed at its Memphis, Tennessee terminal an opportunity to transfer to a vacancy in a line driver job, if qualified, with unit seniority in that job as of the date they entered into employment in such job and retention of any earlier seniority date

they had for company-wide fringe benefits, pursuant to a transfer policy which T.I.M.E. began at Memphis in 1969. Therefore, the provisions of this Order with respect to those individuals in Appendix C employed at T.I.M.E.'s Memphis terminal will be deemed to have already been complied with.

21. T.I.M.E. will immediately take reasonable steps to effectuate the relief to be given Otis A. Zeno and Arthur L. Thornton, as ordered in Appendix A hereto, upon receiving their written acceptance of such relief.

22. T.I.M.E. will also immediately effectuate the training to be given Lee Francis Jones, Thomas Richard Johnson, Henry L. Davis, Raymond L. Rucker, Levi Gant and James A. Keeling, as ordered in Appendix A hereto, to qualify them for the jobs of dockman, partsman or mechanic, as they choose, upon receiving their written acceptance of such relief.

C. **The Defendant Unions**

23. The defendant Unions, their officers, agents, employees, successors and all persons in active concert or participation with them or with any of them will not interfere with the relief herein ordered, nor with the relief ordered by the Decree in Partial Resolution of Suit, entered by the Court on May 12, 1972 and attached hereto as Appendix D.

D. **Reporting**

24. Within six months after entry of this Order and every six months thereafter, the defendant T.I.M.E. will furnish reports to this Court and to the United States Attorney General showing compliance and reporting and other pertinent statistical information with respect to the individuals affected by this Order. Such reports shall include the names and status of all individuals who express an interest in transferring to other jobs under this Order. These reporting requirements will terminate three (3) years subsequent to the entry of this Order; provided, however, that such time may be extended upon good cause shown.

E. **Costs**

25. T.I.M.E. D.C. shall pay plaintiff's costs of the depositions taken by plaintiff in these actions prior to the date of the Consent Decree, upon presentation of official receipts for these costs to T.I.M.E. D.C. by plaintiff, up to a maximum of five thousand dollars ($5,000). Other than the above costs, each party shall bear its own costs.

Done and Entered this 2nd day of March, 1973.

/s/ HALBERT O. WOODWARD
United States District Judge

APPENDIX A

The following individuals presented the most convincing evidence of discrimination and harm resulting therefrom. The chart below shows each individual's name and terminal as well as the job he may move to and his unit seniority in that job for such purposes as bidding and protection against layoff. Individuals in Appendix A, if found qualified, shall be given an opportunity to move to vacancies in the jobs listed in order of their awarded seniority and ahead of individuals listed in Appendices B and C. For full details about the order in which vacancies will be filled, see paragraphs 8-13 and 16-22 in this Final Order.

Name	Terminal	Job	Seniority
Richard Stinson	Hayward, California	Line Driver	July 1, 1969
Veris Sims	Denver, Colorado	Line Driver	July 2, 1965
Filberto Trujillo	Denver, Colorado	Line Driver	July 15, 1965
Edgar Cornelius Rudison	Vernon, California	Line Driver	July 2, 1965
Roy F. Patton	Vernon, California	Line Driver	July 2, 1965
James A. Floyd	Vernon, California	Line Driver	July 2, 1965
Thomas W. White	Vernon, California	Line Driver	July 2, 1965
Marvin R. Vestal	Vernon, California	Line Driver	July 2, 1965
Iris G. Darden Hicks	Vernon, California	Billing Clerk	August 1, 1966
David E. O'Neal	Vernon, California	Salesman (with normal training and probationary period)	January 1, 1966
Jose de Ramirez Almarez	Montebello, Calif.	Line Driver	July 2, 1965
John Passi	Montebello, Calif.	Line Driver	Sept. 23, 1965
Virgil A. Hardin	Montebello, Calif.	Line Driver	Oct. 28, 1965
Joe Amos	Atlanta, Georgia	Line Driver	July 2, 1965
Grady Amos	Atlanta, Georgia	Line Driver	July 2, 1965
Theodus Perry	Atlanta, Georgia	Line Driver	July 1, 1966
John J. Calhoun	Atlanta, Georgia	Line Driver	July 1, 1966
Roger McCrimmon	Irving, Texas (Dallas)	Line Driver	July 1, 1970
James H. Walker	Memphis, Tenn.	Line Driver	July 2, 1965
J. L. McNeal	Memphis, Tenn.	Line Driver	July 2, 1965
Clayborn Moman	Memphis, Tenn.	Line Driver	Jan. 1, 1966
Robert T. Jones	Memphis, Tenn.	Line Driver	Aug. 1, 1970

The following individuals shall receive immediate relief as set forth below:

Arthur L. Thornton of *Memphis, Tennessee* will be permitted to use July 2, 1965 as his unit seniority date in the job of line driver.

Otis A. Zeno of *Hayward, California* will be assigned a truck-tractor by defendant T.I.M.E. of a condition equivalent to those assigned to other city drivers who have assigned routes.

Lee Francis Jones, Thomas Richard Johnson, Henry L. Davis, Raymond L. Rucker, Levi Gant, and *James A. Keeling* of *Nashville, Tennessee* will be provided reasonable training by defendant T.I.M.E. to qualify to work as a dockman, partsman or mechanic. They will then be allowed to move to a vacancy in such job, if qualified, on the same basis as those individuals listed from 1 through 22 in Appendix A above, with a unit seniority date in the new job of July 2, 1965.

APPENDIX B

The evidence in respect to the following individuals is not sufficient to show clear and convincing specific instances of discrimination or harm resulting therefrom. The evidence does show, however, that these individuals were very possibly the objects of discrimination and that they were likely harmed by such discrimination. Because there is no specific evidence, this Court, having broad equitable power with which to fashion a remedy, holds that these individuals are entitled to openings in the jobs listed below with a unit seniority date in that job for such purposes as bidding and protection against layoff as of the date this suit was filed—January 14, 1971. Individuals in Appendix B, if found qualified, shall be given an opportunity to move to vacancies in the jobs listed with a unit seniority date of January 14, 1971 after those in Appendix A, but before those in Appendix C. For full details about the order in which vacancies will be filled, see paragraphs 8-13 and 16-22 in this Final Order.

Name	Terminal	Job
Carlton King	Hayward, Calif.	Line Driver
George W. Sullivan	Hayward, Calif.	Line Driver
Ophers Barber	Irving, Texas (Dallas)	Line Driver
Foster Barnes	San Antonio, Texas	City Driver

APPENDIX C

As to the following individuals, either there was no evidence presented of discrimination against themselves and resulting harm, or they are no longer employed by T.I.M.E. All are members of a class of discriminatees; however, this Court has no evidence to show that these individuals were either harmed or not harmed individually by the discrimination to the class as a whole. It would be unjust to deny completely any relief to these individuals; however, it would also be unjust to grant relief to all when the Court has no evidence of harm individually. In balancing the equities, this Court orders that these individuals be entitled to fill vacancies before the general public, but after those individuals listed in Appendices A and B. Individuals in Appendix C, if found qualified, shall be given an opportunity to move to vacancies in the jobs listed, with unit seniority for such purposes as bidding and protection against layoff from the time they enter into employment in that job. For full details about the order in which vacancies will be filled, see paragraphs 8-13 and 16-22 in this Final Order.

Name	Terminal	Job
J. F. Johnson	Hayward, Calif.	Line Driver
G. F. Navarro	Hayward, Calif.	Line Driver
C. Cordova	Hayward, Calif.	Line Driver
J. R. Madrid	Hayward, Calif.	Line Driver
C. Rodriguez	Hayward, Calif.	Line Driver
L. D. Torres	Hayward, Calif.	Line Driver
J. B. Trujillo	Hayward, Calif.	Line Driver
A. Aguilar	Hayward, Calif.	Line Driver
H. M. Davis, Jr.	Hayward, Calif.	Line Driver
J. C. Keith	Hayward, Calif.	Line Driver
J. H. Munoz	Hayward, Calif.	Line Driver
J. Plasencia	Hayward, Calif.	Line Driver
T. B. Posada	Hayward, Calif.	Line Driver
P. C. Rivers	Hayward, Calif.	Line Driver
R. P. Santos	Hayward, Calif.	Line Driver
E. Tomlinson	Hayward, Calif.	Line Driver
Bennie Whitfield	Hayward, Calif.	Line-Driver or City Driver

Name	Terminal	Job
E. Barr	Denver, Colorado	Line Driver
J. A. Brame	Denver, Colorado	Line Driver
C. Cato	Denver, Colorado	Line Driver
B. T. Chism	Denver, Colorado	Line Driver
M. Craft	Denver, Colorado	Line Driver
R. A. Fisher	Denver, Colorado	Line Driver
R. Franklin	Denver, Colorado	Line Driver
D. W. Gadison	Denver, Colorado	Line Driver
E. E. Guerra	Denver, Colorado	Line Driver
W. Henderson	Denver, Colorado	Line Driver
H. H. Jefferson	Denver, Colorado	Line Driver
E. Knight	Denver, Colorado	Line Driver
F. Mallard	Denver, Colorado	Line Driver
S. Moore	Denver, Colorado	Line Driver
L. D. Parker	Denver, Colorado	Line Driver
D. L. Patterson	Denver, Colorado	Line Driver
G. L. Santifer	Denver, Colorado	Line Driver
T. S. Stephens	Denver, Colorado	Line Driver
C. Thorpe	Denver, Colorado	Line Driver
M. Montoya	Denver, Colorado	Line Driver
F. L. Parker	Denver, Colorado	Line Driver
C. Threats	Denver, Colorado	Line Driver
Harold Anderson*	Denver, Colorado	Line Driver
Willie Rogers*	Denver, Colorado	Line Driver
Willie Hearne*	Denver, Colorado	Line Driver
Elias Gallegos*	Denver, Colorado	Line Driver
Larce Frazier*	Denver, Colorado	Line Driver
B. Brito	Denver, Colorado	Line Driver
R. Costillo	Denver, Colorado	Line Driver
H. Estrada	Denver, Colorado	Line Driver
D. L. Henton	Denver, Colorado	Line Driver
F. Hernandez	Denver, Colorado	Line Driver
R. D. Robles	Denver, Colorado	Line Driver
D. M. Simon	Denver, Colorado	Line Driver
W. Taylor	Denver, Colorado	Line Driver
G. E. Vigil	Denver, Colorado	Line Driver
P. J. Vigil	Denver, Colorado	Line Driver
F. H. Anderson	Denver, Colorado	Line Driver
P. J. Crespin	Denver, Colorado	Line Driver
H. Leslie	Denver, Colorado	Line Driver
J. O. Ortega	Denver, Colorado	Line Driver

* Black or Spanish surnamed American hired in serviceman classification at Denver terminal, inadvertently omitted by plaintiff from its June 19, 1972 list of "Individuals for Whom Plaintiff Seeks Relief."

Name	Terminal	Job
J. N. Pina	Denver, Colorado	Line Driver
J. L. Quintana	Denver, Colorado	Line Driver
J. Sammon	Denver, Colorado	Line Driver
M. Trujillo	Denver, Colorado	Line Driver
W. Vaughn	Denver, Colorado	Line Driver
C. L. Veals	Denver, Colorado	Line Driver
G. Williams	Denver, Colorado	Line Driver
P. P. Hernandez	Denver, Colorado	Line Driver
F. C. Ortega	Denver, Colorado	Line Driver
Lenard Harrison	Denver, Colorado	Line Driver
Earmitt C. Jones	Denver, Colorado	Line Driver
Jerome Pastwick	Denver, Colorado	Dockman
R. Bracamontes	Vernon, Calif.	Line Driver
J. H. Collins	Vernon, Calif.	Line Driver
W. Collins	Vernon, Calif.	Line Driver
M. Ezell, Jr.	Vernon, Calif.	Line Driver
J. H. Gambrell	Vernon, Calif.	Line Driver
T. Guidry	Vernon, Calif.	Line Driver
J. Kelley	Vernon, Calif.	Line Driver
E. E. Linarez	Vernon, Calif.	Line Driver
E. McGee	Vernon, Calif.	Line Driver
T. D. Purvis	Vernon, Calif.	Line Driver
C. Ramah	Vernon, Calif.	Line Driver
H. Rey	Vernon, Calif.	Line Driver
F. E. Robinson	Vernon, Calif.	Line Driver
C. B. Telles	Vernon, Calif.	Line Driver
K. L. Williams	Vernon, Calif.	Line Driver
W. Atkins	Vernon, Calif.	Line Driver
M. O. Carrillo	Vernon, Calif.	Line Driver
C. Collins	Vernon, Calif.	Line Driver
M. T. Espinosa	Vernon, Calif.	Line Driver
G. E. Freeny	Vernon, Calif.	Line Driver
A. A. Garcia	Vernon, Calif.	Line Driver
R. H. Harris	Vernon, Calif.	Line Driver
L. D. Hughey	Vernon, Calif.	Line Driver
H. R. Jimenez	Vernon, Calif.	Line Driver
F. T. Lara	Vernon, Calif.	Line Driver
E. E. Marquez	Vernon, Calif.	Line Driver
J. I. McIver	Vernon, Calif.	Line Driver
F. Mendivil	Vernon, Calif.	Line Driver
A. M. Moniz	Vernon, Calif.	Line Driver
W. Richards	Vernon, Calif.	Line Driver
M. Serna, Jr.	Vernon, Calif.	Line Driver
D. J. Torres	Vernon, Calif.	Line Driver

Name	Terminal	Job
D. J. Valenzuela	Vernon, Calif.	Line Driver
W. E. Agee	Vernon, Calif.	Line Driver
W. Battle	Vernon, Calif.	Line Driver
G. Escajeda, Jr.	Vernon, Calif.	Line Driver
T. Espinosa	Vernon, Calif.	Line Driver
G. F. Haynes	Vernon, Calif.	Line Driver
A. Hernandez	Vernon, Calif.	Line Driver
J. High	Vernon, Calif.	Line Driver
W. G. Jenkins	Vernon, Calif.	Line Driver
J. V. Lopez	Vernon, Calif.	Line Driver
A. Martinez	Vernon, Calif.	Line Driver
M. D. Melenez	Vernon, Calif.	Line Driver
G. M. Miranda	Vernon, Calif.	Line Driver
J. R. Rivers	Vernon, Calif.	Line Driver
A. M. Rodriguez	Vernon, Calif.	Line Driver
F. G. Salinas	Vernon, Calif.	Line Driver
E. Zamarripa	Vernon, Calif.	Line Driver
J. Solis	Vernon, Calif.	Line Driver
J. E. Aurelio	Vernon, Calif.	Line Driver
H. Bausley	Vernon, Calif.	Line Driver
J. L. Bosques	Vernon, Calif.	Line Driver
S. Burton	Vernon, Calif.	Line Driver
L. A. Byers	Vernon, Calif.	Line Driver
R. G. Compos	Vernon, Calif.	Line Driver
A. Carlos	Vernon, Calif.	Line Driver
E. S. Castro	Vernon, Calif.	Line Driver
F. Cazares	Vernon, Calif.	Line Driver
J. Corley	Vernon, Calif.	Line Driver
M. B. Corona	Vernon, Calif.	Line Driver
L. E. Daniels	Vernon, Calif.	Line Driver
S. M. Davis	Vernon, Calif.	Line Driver
M. E. Dean	Vernon, Calif.	Line Driver
D. L. De Leon	Vernon, Calif.	Line Driver
J. S. Delgado	Vernon, Calif.	Line Driver
C. Edwards	Vernon, Calif.	Line Driver
J. A. Garcia	Vernon, Calif.	Line Driver
R. Garcia	Vernon, Calif.	Line Driver
R. E. Glenn, Jr.	Vernon, Calif.	Line Driver
S. A. Golden	Vernon, Calif.	Line Driver
R. L. Height	Vernon, Calif.	Line Driver
H. Herrera	Vernon, Calif.	Line Driver
J. Jefferson, Jr.	Vernon, Calif.	Line Driver
T. Jenigan	Vernon, Calif.	Line Driver
D. Johnson	Vernon, Calif.	Line Driver

Name	Terminal	Job
G. E. Johnson	Vernon, Calif.	Line Driver
E. Jones	Vernon, Calif.	Line Driver
L. D. Jones	Vernon, Calif.	Line Driver
W. T. Jones, III	Vernon, Calif.	Line Driver
F. X. Martinez	Vernon, Calif.	Line Driver
J. L. Melero	Vernon, Calif.	Line Driver
E. D. Molina	Vernon, Calif.	Line Driver
A. Montijo	Vernon, Calif.	Line Driver
H. F. Navarro	Vernon, Calif.	Line Driver
H. B. Nettles	Vernon, Calif.	Line Driver
L. A. Palacio	Vernon, Calif.	Line Driver
J. F. Pandolf	Vernon, Calif.	Line Driver
O. Pantoja, Jr.	Vernon, Calif.	Line Driver
B. Ponce, Jr.	Vernon, Calif.	Line Driver
A. C. Porter	Vernon, Calif.	Line Driver
R. J. Quevedo	Vernon, Calif.	Line Driver
M. Ramirez	Vernon, Calif.	Line Driver
J. Ramos	Vernon, Calif.	Line Driver
H. L. Reed	Vernon, Calif.	Line Driver
W. J. Roddie	Vernon, Calif.	Line Driver
R. H. Rodriguez	Vernon, Calif.	Line Driver
J. L. Smith	Vernon, Calif.	Line Driver
J. Talamantes	Vernon, Calif.	Line Driver
J. Taylor	Vernon, Calif.	Line Driver
R. Tellez	Vernon, Calif.	Line Driver
F. Thompson	Vernon, Calif.	Line Driver
J. Thompson	Vernon, Calif.	Line Driver
G. L. Torres	Vernon, Calif.	Line Driver
J. F. Torres	Vernon, Calif.	Line Driver
S. Tussey	Vernon, Calif.	Line Driver
J. L. Walters	Vernon, Calif.	Line Driver
R. E. Washington	Vernon, Calif.	Line Driver
R. A. Wesley	Vernon, Calif.	Line Driver
A. L. Williams (1951)	Vernon, Calif.	Line Driver
H. Woodson	Vernon, Calif.	Line Driver
F. Wright, Jr.	Vernon, Calif.	Line Driver
A. L. Williams (1956)	Vernon, Calif.	Line Driver
F. Atkins*	Vernon, Calif.	Line Driver
W. Horace*	Vernon, Calif.	Line Driver
W. Davis	Vernon, Calif.	Line Driver

* Black hired in dockman classification at Vernon terminal, inadvertently omitted by plaintiff from its June 19, 1972 list of "Individuals for Whom Plaintiff Seeks Relief."

Name	Terminal	Job
H. Freeny	Vernon, Calif.	Line Driver
L. Henderson	Vernon, Calif.	Line Driver
C. Merrill	Vernon, Calif.	Line Driver
James E. Neely	Vernon, Calif.	Line Driver
William T. Simpson, Jr.	Vernon, Calif.	Line Driver
George Taylor	Vernon, Calif.	Line Driver
T. P. Escalera	Montebello, Calif.	Line Driver
T. O. Gastelo	Montebello, Calif.	Line Driver
F. S. Herrera	Montebello, Calif.	Line Driver
I. V. Vasquez	Montebello, Calif.	Line Driver
J. Vasquez	Montebello, Calif.	Line Driver
E. L. Banuelos	Montebello, Calif.	Line Driver
R. T. Nebo	Montebello, Calif.	Line Driver
R. J. Phillips	Montebello, Calif.	Line Driver
J. Plant, Jr.	Montebello, Calif.	Line Driver
A. B. Soleto	Montebello, Calif.	Line Driver
J. B. Soleto	Montebello, Calif.	Line Driver
W. B. Turner	Montebello, Calif.	Line Driver
J. R. Castanon	Montebello, Calif.	Line Driver
G. Cooper	Montebello, Calif.	Line Driver
A. Dominguez	Montebello, Calif.	Line Driver
A. Gomez	Montebello, Calif.	Line Driver
A. R. Gomez	Montebello, Calif.	Line Driver
R. Parral	Montebello, Calif.	Line Driver
M. S. Portugal	Montebello, Calif.	Line Driver
A. H. Solorzano	Montebello, Calif.	Line Driver
L. E. Villa	Montebello, Calif.	Line Driver
C. E. Walter	Montebello, Calif.	Line Driver
G. G. Welsh	Montebello, Calif.	Line Driver
F. D. Blanco	Montebello, Calif.	Line Driver
N. Cantu	Montebello, Calif.	Line Driver
J. S. Cuevas	Montebello, Calif.	Line Driver
R. Flores	Montebello, Calif.	Line Driver
W. J. Gonsalves	Montebello, Calif.	Line Driver
F. Hasson, Jr.	Montebello, Calif.	Line Driver
D. A. Hernandez	Montebello, Calif.	Line Driver
T. A. Madrid	Montebello, Calif.	Line Driver
E. Martinez	Montebello, Calif.	Line Driver
A. Newsom	Montebello, Calif.	Line Driver
A. B. Rodriguez	Montebello, Calif.	Line Driver
E. W. Turner	Montebello, Calif.	Line Driver
R. R. Williams	Montebello, Calif.	Line Driver
W. M. Williams	Montebello, Calif.	Line Driver
R. Montelongo	Montebello, Calif.	Line Driver

Name	Terminal	Job
I. M. Villarruel	Montebello, Calif.	Line Driver
A. M. Bender	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
J. Bradley	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
J. E. Buchanan	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
S. Burks	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
C. Collier	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
S. W. Gordon	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
A. Smith	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
M. Washington, Jr.	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
J. E. Winfrey	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
R. L. Williams	Nashville, Tenn.	Line Driver, Dockman, Mechanic or Partsman
William E. Dobbin	Nashville, Tenn.	Dockman
James Wallace, Jr.	Nashville, Tenn.	Dockman
C. F. Bankston	Atlanta, Georgia	Line Driver
W. Laney	Atlanta, Georgia	Line Driver
R. Parks	Atlanta, Georgia	Line Driver
R. R. Tucker	Atlanta, Georgia	Line Driver
E. Franklin	Atlanta, Georgia	Line Driver
W. Minniefield	Atlanta, Georgia	Line Driver
P. Rucker (1948)	Atlanta, Georgia	Line Driver
P. Rucker (1951)	Atlanta, Georgia	Line Driver
B. F. Lee	Atlanta, Georgia	Line Driver
J. Batchelor	Atlanta, Georgia	Line Driver
W. Heath	Atlanta, Georgia	Line Driver
T. E. Perry	Atlanta, Georgia	Line Driver
J. Banks	Atlanta, Georgia	Line Driver
J. Anderson	Chicago, Illinois	City Driver or Line Driver
H. Christmas	Chicago, Illinois	City Driver or Line Driver
F. E. Alfaro	Chicago, Illinois	City Driver or Line Driver
J. Cerda	Chicago, Illinois	City Driver or Line Driver
H. G. Cuevas	Chicago, Illinois	City Driver or Line Driver
M. Gomez	Chicago, Illinois	City Driver or Line Driver

Name	Terminal	Job
M. Guerrero	Chicago, Illinois	City Driver or Line Driver
O. R. Mendoza	Chicago, Illinois	City Driver or Line Driver
F. Rangel, Jr.	Chicago, Illinois	City Driver or Line Driver
D. Conner	Chicago, Illinois	City Driver or Line Driver
H. Guyse	Chicago, Illinois	City Driver or Line Driver
C. McDalton	Chicago, Illinois	City Driver or Line Driver
A. Austin	Chicago, Illinois	Line Driver
L. Ware	Chicago, Illinois	Line Driver
D. M. Blanton	Oklahoma City, Okl.	Line Driver
A. M. Castillo	Oklahoma City, Okl.	Line Driver
T. Jordan, Jr.	Oklahoma City, Okl.	Line Driver
J. S. Mojica	Oklahoma City, Okl.	Line Driver
D. Smith	Oklahoma City, Okl.	Line Driver
J. W. Walter	Oklahoma City, Okl.	Line Driver
H. L. Brown	Irving, Texas	Line Driver
R. L. Green	Irving, Texas	Line Driver
C. E. Lewis	Irving, Texas	Line Driver
A. L. McKnight	Irving, Texas	Line Driver
D. Parson	Irving, Texas	Line Driver
G. L. Simmons	Irving, Texas	Line Driver
W. Z. Flemming	Irving, Texas	Line Driver
F. Graves, Jr.	Irving, Texas	Line Driver
B. C. Johnson	Irving, Texas	Line Driver
L. E. Reid, Jr.	Irving, Texas	Line Driver
G. H. Sanders	Irving, Texas	Line Driver
C. V. Stephenson	Irving, Texas	Line Driver
P. L. Walton, Jr.	Irving, Texas	Line Driver
Harrell Holly	Irving, Texas	Line Driver
Walter J. Price	Irving, Texas	City Driver or Dockman
Michael Arriaga	Irving, Texas	City Driver or Dockman
Tereso J. Gonzales	Irving, Texas	City Driver or Dockman
*G. W. Fisher	Memphis, Tenn.	Line Driver
A. Henderson	Memphis, Tenn.	Line Driver
L. Jones	Memphis, Tenn.	Line Driver

* The relief specified in Appendix C for all of the following incumbent employees at the Memphis, Tennessee terminal will be deemed to have already been complied with—see paragraph 20 of this Final Order.

Name	Terminal	Job
R. D. Parker	Memphis, Tenn.	Line Driver
D. C. Robinson	Memphis, Tenn.	Line Driver
R. Sanders	Memphis, Tenn.	Line Driver
L. R. Taylor	Memphis, Tenn.	Line Driver
F. Wighley	Memphis, Tenn.	Line Driver
J. Wiley	Memphis, Tenn.	Line Driver
E. E. Ballard	Memphis, Tenn.	Line Driver
J. Glasper	Memphis, Tenn.	Line Driver
W. H. Harrison	Memphis, Tenn.	Line Driver
M. Smith	Memphis, Tenn.	Line Driver
S. Wilburn	Memphis, Tenn.	Line Driver
C. Woods	Memphis, Tenn.	Line Driver
J. R. Woods	Memphis, Tenn.	Line Driver
S. Murry	Memphis, Tenn.	Line Driver
R. D. Campbell	Memphis, Tenn.	Line Driver
W. G. Gately	Memphis, Tenn.	Line Driver
B. B. Hodges	Memphis, Tenn.	Line Driver
O. Holcomb	Memphis, Tenn.	Line Driver
A. C. Taylor	Memphis, Tenn.	Line Driver
J. L. Benefield	Memphis, Tenn.	Line Driver
J. L. Boudreaux	Memphis, Tenn.	Line Driver
W. G. Bryan	Memphis, Tenn.	Line Driver
H. S. Holliday	Memphis, Tenn.	Line Driver
T. Luttrell	Memphis, Tenn.	Line Driver
O. McElroy	Memphis, Tenn.	Line Driver
L. E. Nichols	Memphis, Tenn.	Line Driver
J. W. O'Neill	Memphis, Tenn.	Line Driver
O. L. Shaw	Memphis, Tenn.	Line Driver
P. C. Thomas	Memphis, Tenn.	Line Driver
J. Williamson	Memphis, Tenn.	Line Driver
Charles E. Taylor	Memphis, Tenn.	Line Driver
Charles D. Glover	Memphis, Tenn.	Line Driver
B. Wilbanks	Memphis, Tenn.	Line Driver
F. Yount	Memphis, Tenn.	Line Driver
H. Kelley	Memphis, Tenn.	Line Driver
G. Jacques	Memphis, Tenn.	Line Driver
Fred Williams, Jr.	Memphis, Tenn.	Line Driver
W. E. Conner	Phoenix, Arizona	Line Driver
G. Amaya	Phoenix, Arizona	Line Driver
P. Estrada	Phoenix, Arizona	Line Driver
A. M. Villarreal	Phoenix, Arizona	Line Driver
M. L. Cobb	Phoenix, Arizona	Line Driver
D. E. Lechuga	Phoenix, Arizona	Line Driver
I. W. Jackson	Phoenix, Arizona	Line Driver

Name	Terminal	Job
J. E. Young	Phoenix, Arizona	Line Driver
H. De La Rosa	Lubbock, Texas	Line Driver
A. Larkin	Lubbock, Texas	Line Driver
T. Lewis	Lubbock, Texas	Line Driver
C. E. Jenkins	Chattanooga, Tenn.	Line Driver
J. Gates	Chattanooga, Tenn.	Line Driver
J. C. Grayson	Chattanooga, Tenn.	Line Driver
R. J. Moorer	Chattanooga, Tenn.	Line Driver
J. Littleton, Jr.	Paris, Tennessee	Line Driver
E. Howard	Cincinnati, Ohio	Line Driver
I. Jackson	Kansas City, Mo.	Line Driver
N. O. Pinon	Kansas City, Mo.	Line Driver
L. R. Chandler	Knoxville, Tenn.	Line Driver
F. R. Davis	Knoxville, Tenn.	Line Driver
C. Wadley	Knoxville, Tenn.	Line Driver
C. G. Dorsey	Portland, Oregon	Line Driver
W. L. Moore	Portland, Oregon	Line Driver
A. R. Coca	Portland, Oregon	Line Driver
G. Brock	St. Louis, Missouri	Line Driver
H. L. Thorpe, Jr.	St. Louis, Missouri	Line Driver
G. W. Hendricks	Seattle, Washington	Line Driver
D. Hernandez	Seattle, Washington	Line Driver
O. I. Braswell	Seattle, Washington	Line Driver
C. R. Timmons	Seattle, Washington	Line Driver

ORDER
Amending Final Order by District Court for the Northern District of Texas, March 19, 1973, Unreported

In the United States District Court for the Northern District of Texas, Lubbock Division

United States of America,
Plaintiff,
v.
T.I.M.E. D.C., Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO,
Defendants.
Civil Action No. 5-868

United States of America,
Plaintiff,
v.
T.I.M.E. Freight, Inc. (now known as T.I.M.E. D.C., Inc.), and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,
Defendants.
Civil Action No. 5-897

Order

Subsequent to the entry of the Court's Order in the above entitled and numbered causes of action on March 2, 1973 motions were duly and timely made for amendment of paragraph

18 of said Order. Upon reexamination of the Order, the previous Opinions of this Court, and after having received written communication from all parties to this case, both those in favor of and those opposed to the amendment of paragraph 18, the Court is of the opinion that paragraph 18 should be amended as hereinafter set forth. It appears that if paragraph 18 is not amended that the process of removing any discriminatory practices will be delayed and inequities might possibly result.

It is therefore Ordered and Adjudged that the Final Order of this Court dated March 2, 1973 shall be amended so that paragraph 18 thereof shall hereafter read as follows:

"18. T.I.M.E. will next offer to those individuals in column 1 of Appendix C hereto vacancies in the jobs set forth in column 3, with unit seniority in such jobs as of the date they enter into employment in such jobs, at the terminal listed in column 2."

Other than specifically set forth above the Order of this Court dated March 2, 1973 shall remain unchanged.

The Clerk will furnish a copy hereof to each attorney.

Entered this 19th day of March, 1973.

/s/ HALBERT O. WOODWARD
United States District Judge

THE CIVIL RIGHTS ACT OF 1964,
As Amended—Title VII, Section 703(a) Through (j), 42 USC Section 2000(e)-2(a) Through (j)

§ 2000e-2. Unlawful Employment Practices—Employer Practices

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely, affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

* * * * * * *

Labor organization practices

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which

would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

* * * * * * *

Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29.

* * * * * * *

Preferential treatment not to be granted on account of existing number or percentage imbalance

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area. Pub.L. 88-352, Title VII, § 703, July 2, 1964, 78 Stat. 255; Pub.L. 92-261, § 8(a),(b), Mar. 24, 1972, 86 Stat. 109.

THE CIVIL RIGHTS ACT OF 1964, As Amended—Title VII, Sections 707(a) Through (e); 42 U.S.C. Sections 2000(e) 6(a) Through (e)

§ 2000e-6. Civil actions by the Attorney General—Complaint

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

Jurisdiction; three-judge district court for cases of general public importance; hearing, determination, expedition of action, review by Supreme Court; single-judge district court; hearing, determination, expedition of action

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk c such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief

judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

(c) Effective two years after March 24, 1972, the function of the Attorney General under this section shall be transferred to

the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

(e) Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title.

Supreme Court, U. S.
FILED
JUL 21 1976
MICHAEL RODAK, JR., CLERK

APPENDIX
Volume I

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-636 and No. 75-672
(Consolidated)

No. 75-636
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent,

and

No. 75-672
T.I.M.E.-D.C., INC.,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI IN NO. 75-636 FILED OCTOBER 29, 1975
PETITION FOR CERTIORARI IN NO. 75-672 FILED NOVEMBER 6, 1975
CERTIORARI FOR BOTH GRANTED MAY 24, 1976

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-636 and No. 75-672
(Consolidated)

No. 75-636
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent,

and

No. 75-672
T.I.M.E.-D.C., INC.,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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I

RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

United States of America, Plaintiff. v. T.I.M.E. D.C., Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Association of Machinists and Aerospace Workers, AFL-CIO, Defendants.	Civil Action. No. 5-868.
United States of America, Plaintiff. v. T.I.M.E. Freight, Inc. (Now Known as T.I.M.E. D.C., Inc.), and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Defendants.	Civil Action. No. 5-897.

A. U. S. v. T.I.M.E. Freight, Inc., and Local 480, International Brotherhood of Teamsters, M. D. Tenn., No. C.A. 5069.

(*Note*: upon change of venue to the United States District Court for the Northern District of Texas this case was renumbered No. C.A. 5-897).

1968

(1) May 15 Original complaint filed.

(2) June 10 Answer of Defendant T.I.M.E. Freight, Inc.

(3) Dec. 12 Amended Complaint filed joining Local 480, International Brotherhood of Teamsters as a party Defendant.

1971

(4) May 5 Answer of Defendant Local 480 entered.

(5) May 5 Order granting change of venue to the Northern District of Texas, which renumbered this case as No. C.A. 5-897.

B. U. S. v. T.I.M.E.-D.C., Inc., and International Brotherhood of Teamsters, N.D. Tex., No. C.A 5-868

1971

(1) Jan. 14 Original complaint filed.

(2) Feb. 3 Answer of Defendant T.I.M.E.-D.C., Inc.

(3) Feb. 16 Answer of Defendant International Brotherhood of Teamsters.

(4) Apr. 16 Motion by Defendant T.I.M.E.-D.C., Inc., for joinder of party Defendant.

(5) Apr. 21 Order that Motion by Defendant T.I.M.E.-D.C., Inc., be granted and that the International Association of Machinists and Aerospace Workers, A.F.L.-C.I.O., be joined as a party Defendant.

(6) Apr. 30 Order granting Motion by Defendant T.I.M.E.-D.C., Inc., to consolidate Nos. C.A. 5-868 and C.A. 5-897.

(7) May 11 Answer of Defendant International Association of Machinists and Aerospace Workers.

(8) Dec. 6 Amendments to Complaint filed in No. C.A. 5-897.

(9) Dec. 31 Order granting Plaintiff's Motion to join Local 745, International Brotherhood of Teamsters as a party Defendant, but as an individual Defendant only.

1972

(10) Jan. 17 Amended Answer of Defendant T.I.M.E.-D.C., Inc., filed.

(11) Jan. 20 Order denying Motions by Defendant International Union that they be dismissed, denying Motion by Defendant T.I.M.E.-D.C., Inc., that it be dismissed and permitting joinder of Teamsters Local 745 as a party Defendant.

(12) May 1 Entry of Pre-Trial Order.

(13) May 3 through May 12 Trial on the merits.

(14) May 12 Decree in Partial Resolution Suit.

(15) Oct. 19 Memorandum Opinion issued.

(16) Dec. 6 Supplemental Opinion issued.

1973

(17) Mar. 2 Final Order entered.

(18) Mar. 19 Order amending Final Order entered.

II

RELEVANT PLEADINGS, CHARGES, FINDINGS OR OPINIONS

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

(Title Omitted in Printing)

No. 5-868

A. Complaint and Defendants' Answers

The United States of America, by its attorneys, alleges:

1. This action is brought by the Attorney General on behalf of the United States seeking relief for violations of Title VII of the Civil Rights Act of 1964 (78 Stat. 253), 42 U.S.C. 2000e *et seq.* This Court has jurisdiction under 28 U.S.C. 1345 and under Section 707(b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6(b).

2. The defendant T.I.M.E.-D.C. Freight, Inc., is a Delaware corporation, with corporate offices in Lubbock, Texas, which offers services to the general public as a common motor carrier of general commodities operating in interstate commerce. T.I.M.E.-D.C. operates 49 terminals in 24 states, employing approximately 6,500 persons. Of defendant's employees, approximately 265 are Negro and 231 are Spanish-surnamed individuals, and of those employees, only 21 Negro employees and 32 Spanish-surnamed employees are assigned to job classifications other than garage serviceman, dock worker, city driver and janitor.

3. The defendant T.I.M.E.-D.C. is an employer and is engaged in an industry affecting commerce within the meaning

of Section 701(b) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-(b).

4. The defendant International Brotherhood of Teamsters, Chauffeurs, Warehouseman, and Helpers (hereinafter referred to as the Teamsters) is an unincorporated association doing business in this district. Defendant Teamsters, by itself, through designated sectional conferences and through affiliated local unions, is the exclusive bargaining representative of the majority of defendant T.I.M.E.-D.C.'s employees.

5. The defendant Teamsters is a labor organization within the meaning of Section 701(d) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-(d)(1).

6. The defendant T.I.M.E.-D.C. follows a policy and practice of discrimination in employment against Negroes because of their race and against Spanish-surnamed persons on account of their national origin throughout its business operations. This policy and practice has been and is implemented by defendant T.I.M.E.-D.C., among other ways, as follows:

(a) Defendant T.I.M.E.-D.C. has refused and continues to refuse to recruit, hire, transfer and promote Negro and Spanish-surnamed persons on an equal basis with white persons.

(b) Defendant T.I.M.E.-D.C. hires and makes assignments to job classifications on the basis of race and national origin, assigning Negroes and Spanish-surnamed Americans to lower paying, less desirable classifications such as dock worker, city driver, serviceman and janitor, while reserving for whites the higher paying more desirable classifications such as over-the-road driver, office worker, mechanic, sales personnel and supervisor.

(c) Defendant T.I.M.E.-D.C. has refused and continues to refuse to employ Negro and Spanish-surnamed persons

as casual (non-regular) employees and has refused and continues to deny opportunities to Negro and Spanish-surnamed casuals to become regular employees on the same basis as white persons.

(d) Defendant T.I.M.E.-D.C. has refused and failed to promote and otherwise transfer Negro and Spanish-surnamed and to provide an opportunity for Negro and Spanish-surnamed employees to transfer to over-the-road driver positions, mechanics positions and managerial positions on the same basis it has promoted, transferred and provided the opportunity for the transfer of white employees; and defendant T.I.M.E.-D.C. maintains a system of granting promotions and transfers which perpetuates the effects of its discrimination against Negro and Spanish-surnamed employees.

7. The defendant Teamsters by itself and through designated sectional conferences and through affiliated local unions, is a party to collective bargaining agreements with defendant T.I.M.E.-D.C. which among other things, provide for the accumulation of seniority by job classification and for separate lines of seniority by job classification. Said collective bargaining agreements prevent or tend to prevent transfer from the lower paying, less desirable classifications to which Negroes and Spanish-surnamed persons were assigned on the basis of race and national origin to the higher paying, more desirable classifications and thus perpetuate the effects of the policies and practices of discrimination by race and national origin of defendant T.I.M.E.-D.C.

8. The defendant T.I.M.E.-D.C. has failed to take adequate affirmative steps to correct the continuing effects of its prior discriminatory practices. The defendant Teamsters has failed to agree to necessary modifications of its collective bargaining agreements necessary to prevent the perpetuation of defendant T.I.M.E.-D.C.'s discriminatory practices.

9. The acts and practices of the defendants described in the above paragraphs constitute a pattern and practice of resistance to the full enjoyment by Negro and Spanish-surnamed persons of their right to equal employment opportunities without discrimination or distinction based on race or national origin. The pattern and practice is of such a nature and is intended to deny the full exercise of such rights. Unless restrained by order of this Court, defendants will continue to engage in the same or similar practices.

Wherefore, the plaintiff prays for an expedited hearing and for an order preliminarily and permanently enjoining the defendants, their officers, agents, employees, successors, affiliates and all persons in active concert or participation with them from engaging in any racially discriminatory employment practice and more particularly from:

(a) Failing or refusing to consider or hire any Negro or Spanish-surnamed person for any position or job classification on account of his race, color or national origin;

(b) Failing or refusing to hire and transfer Negro and Spanish-surnamed persons to job classifications such as over-the-road driver, office worker, mechanic, sales, supervisory on the same basis as whites were formerly hired and without loss of seniority or other benefits;

(c) Promoting or reassigning any employee on a racially discriminatory basis or because of his national origin or failing to consider or promote any employee on account of his race, color or national origin;

(d) Engaging in any act or practice which, directly or indirectly, tends to discourage Negro or Spanish-surnamed persons from seeking employment in any position, or promotion or transfer to any position, for which they may be qualified;

(e) Failing to compensate all Negro and Spanish-surnamed persons, previously discriminated against, for loss of earnings occasioned by said discrimination; and

(f) Failing and refusing to take such other reasonable and adequate affirmative steps to correct the effects of their past discriminatory practices.

Plaintiff further prays for such other and further relief as the interests of justice may require, together with the costs and disbursements of this action.

Respectfully submitted

/s/ JOHN N. MITCHELL
Attorney General

/s/ JERRIS LEONARD
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

(Title Omitted in Printing)

No. 5-868

Answer of Defendant T.I.M.E. DC, Inc.

Now Comes Defendant T.I.M.E. DC, Inc., and would show the Court that its correct corporate name is T.I.M.E. DC, Inc., and would further show the Court the following:

I

Defendant T.I.M.E. DC, Inc., admits the allegations in Paragraph 1 of Plaintiff's complaint, and that this Court has jurisdiction of this cause.

II

Defendant T.I.M.E. DC, Inc., admits the allegations in Paragraph 2 of the complaint as being substantially correct, but subject to correction with respect to exact numbers.

III

Defendant T.I.M.E. DC, Inc., admits the allegations in Paragraph 3 of the complaint.

IV

Defendant T.I.M.E. DC, Inc., admits the allegations in Paragraph 4 of the complaint, but specifically denies that the International Brotherhood of Teamsters, Warehousemen, Chauffeurs and Helpers represents all of the employees of T.I.M.E. DC, Inc., that may be affected by this suit.

V

Defendant T.I.M.E. DC, Inc., admits the allegations in Paragraph 5 of the complaint.

VI

Defendant T.I.M.E. DC, Inc., denies all of the allegations in Paragraphs 6. 7, 8 and 9 of the complaint. and each subdivision thereof.

Wherefore, Defendant T.I.M.E. DC, Inc., prays the Court that all the relief prayed for in the Plaintiff's complaint be denied, and that it go hence with its costs, and for such other and further relief in law and in equity to which it may be justly entitled for which it will ever pray.

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

(Title Omitted in Printing)

No. 5-868

Answer of Defendant International Brotherhood of Teamsters

Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (herein "Teamsters") in answer to the Complaint in this case says:

1

The Complaint fails to state a claim against this defendant upon which relief can be granted.

2

Plaintiff has failed to join necessary parties, i.e. those local unions which are parties to the collective bargaining agreements which plaintiff asks this Court to modify.

3

1. Teamsters admit the allegations of paragraph 1 of the Complaint.

2. Teamsters admit that defendant TIME-DC, Inc. has corporate offices in Lubbock, Texas, and is a common motor carrier of general commodities operating in interstate commerce. Defendant is not informed as to the other matters alleged in paragraph 2 of the Complaint, and therefore denies same.

3. Teamsters admit the allegations of paragraph 3 of the Complaint.

4. Teamsters admit that it is an unincorporated association doing business as a labor organization; that certain local unions chartered by Teamsters are parties to collective bargaining agreements with TIME-DC, Inc., and that TIME-DC is party to certain National and Supplemental agreements with certain negotiating committees and local unions affiliated with Defendant Teamsters.

Except as specifically admitted herein, Teamsters denies the allegations of paragraph 4 of the Complaint.

5. Teamsters admit the allegations of paragraph 5 of the Complaint.

6. Defendant Teamsters has insufficient knowledge to affirm or deny the allegations of paragraph 6 of the Complaint; but would show, in this connection that no employee, or prospective employee of TIME-DC has complained to Teamsters of any such discrimination as is alleged in the Complaint herein; and Teamsters would further show that should such complaints arise they could be corrected by utilization of the grievance machinery provided in existing collective bargaining agreements, and specifically pursuant to Article 38 thereof which provides:

> "The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin."

7. Teamsters admit that there exist certain collective bargaining agreements between TIME-DC, Inc. and affiliates of Teamsters as set out in ¶ 3(4), *supra*, and pray reference to the contracts, rather than plaintiffs' characterization of them. Teamsters deny the remaining allegations of paragraph 7 of the Complaint.

8. Teamsters have no knowledge as to the alleged failures of TIME-DC, and therefore deny same.

Teamsters deny that any request for modification of TIME-DC agreements has been made, deny that modifications are necessary to comply with the statute, and deny all other allegations of paragraph 8 of the Complaint.

9. Teamsters deny the allegations of paragraph 9 of the Complaint.

Wherefore, Teamsters pray that the relief sought by plaintiff be denied; that this defendant be dismissed with its costs, including attorney's fees, and for such further relief to which this defendant is entitled.

MULLINAX, WELLS, MAUZY & COLLINS
1601 National Bankers Life Building
Dallas, Texas 75201

/s/ By L. N. D. WELLS, JR.
Attorneys for Defendant,
International Brotherhood of Teamsters

(Affidavit of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

(Title Omitted in Printing)

No. 5-868

B. **Answers of T.I.M.E.-DC, Inc. to Interrogatories Propounded by the United States of America**

Now Comes T.I.M.E.-DC, Inc., successor to T.I.M.E. Freight, Inc., one of the Defendants in the above cause, and files its Answers to Interrogatories propounded by the United States of America to T.I.M.E.-DC, Inc.—Nashville, in the above styled cause as follows:

1. Does the Company interpret any provisions of any present or past collective bargaining agreement as prohibiting T.I.M.E. servicemen at its Nashville terminal from progressing to the position of mechanic and carrying with them their terminal seniority?

Answer: Yes, as to past agreements. No, as to present agreement.

If the answer to Interrogatory Number 1 is affirmative, set forth the name of the collective bargaining agreement or agreements and each article and section therein which so provides or so provided, and in addition thereto, state the historical background and reason for this article and section of the agreement or agreements covering this subject.

Answer: **Nashville Mechanics Agreement** with Local Union 327 for period 4-1-58 to 1-31-61:

Article 2 provides: "Each classification of employees covered by this Contract shall have and maintain separate seniority. For illustration—Painter, Body and Fender Repairman both A and B, shall not be permitted to apply their seniority in classifications of Mechanics, Grade A or B. Garage Servicemen shall not be permitted to exercise their seniority for any work of vacancies other than work within the Garage Serviceman classification."

Article 14—Classifications: "This Agreement shall cover only the employees engaged in the classifications of work shown below who are employed at the Employer's Nashville, Tennessee Garage or Shop. B Mechanics, Grade A Mechanics, Grade B Paint and Body, Grade A Paint and Body, and Garage Servicemen."

Mechanics Agreement with Local 327 for period 2-1-61 to 1-31-64:

Article 2—Seniority: "Each classification of employee covered by this Contract shall have and maintain seniority. Neither Mechanics nor Painters, Body and Fender Repairmen can claim any work in the Garage Serviceman classification in the event of layoffs."

Article 14—Classifications: "This shall cover only the employees engaged in the classification of work shown below who are employed in the Employer's Nashville, Tennessee Garage or Shops." (All classifications named as outlined in prior Contract.)

Mechanics Agreement with Local 327 for period 2-1-64 to 1-31-67:

Article 2—Seniority: "Each classification of employee covered by this Contract shall have and maintain separate seniority. Neither Mechanics nor Painter, Body or Fender Repairmen can claim any work in the Garageman's classification."

Article 15—Classifications: "This Agreement shall cover only the employees engaged in the classification of work shown below." (Same as noted above.)

Southeastern Area Garage Agreement Covering Mechanics and Servicemen for period of 4-1-67 to 3-31-70.

Article 5, Section 3—Seniority: "Vacancies and other job opportunities within the classifications covered by this Agreement shall be subject to seniority and shall be posted for bid."

Section 4—"The bulletining of positions or vacancies shall consist of the number of days, classifications, the days to be worked and the starting time shall be the same time each day of the assignment."

Article 34, Section F: "Garage Servicemen, Class B shall perform all those duties as specified in the Contract and shall be limited to the operation of moving equipment to and from the shop for maintenance; they may unhook a trailer for the purpose of moving it to the shop for maintenance or service. They will not be permitted to hook up equipment or move equipment on the yard or to participate in any way in the dock or road operation."

Will eliminate prior pickup and delivery Agreements, all of which carry similar restrictions as named below in the following Contract.

National Master Freight Agreement and Southern Conference Area Local Freight Forwarding Pickup and Delivery Supplemental Agreement for the period of 4-1-70 through 6-30-73:

Article 2, Section 2, supplements to Master Agreement: "All such supplemental agreements are to be clearly limited to their specific classification of work as enumerated or described in each individual supplement."

Southern Conference Supplemental Agreement:

Article 40, Section 1(a): "The execution of this Agreement on the part of the Employer shall cover all the local freight

forwarding pickup and delivery operations of the Employer in said described area, excluding El Paso, Texas."

Article 42, Section 2(a)—Seniority: "Terminal seniority as measured by length of service at such terminal shall prevail except as otherwise provided for in this Agreement." Article 46, Section 2: "Regular employees on layoff status shall have seniority over probationary and casual employees and shall be returned to the regular payroll when eight man-hours per day are worked in any five out of seven days."

National Master Freight Agreement and Southern Conference Over-The-Road Supplemental Agreement for period of 4-1-70 through 6-30-73:

Article 2, Section 1: "The execution of this Agreement on the part of the Employer shall cover all operations of the Employer which are covered by this Agreement, and shall have application to the work performed within the classifications defined and set forth in the Agreements supplemental hereto."

Section 2: "All such Supplemental Agreements are subject to and controlled by the terms of this Master Agreement and are sometimes referred to herein as Supplemental Agreements. All such Supplemental Agreements are to be clearly limited to the specific classifications of work as enumerated or described in each individual Supplement."

Southern Conference Supplemental Agreement:

Article 40, Section 3: "Local dock work or city pickup and delivery service is not subject to the terms and conditions of this Agreement, but is subject to a separate Agreement entered into between the Employer and the involved local Union.

Employees subject to this Agreement shall not be permitted to perform dock work or city pickup and delivery service where the performance of such work conflicts with the local city pickup and delivery Agreement between the Employer and a local Union affiliated with the I.B.T.C.W.&H. and except as specifically permitted herein."

Article 42, Section 2—Seniority: "Terminal seniority as measured by length of service at such terminal shall prevail except in those instances where a majority of employees of an Employer in the Southern Conference Area agree by vote to the contrary."

Article 42, Section 3: "When it becomes necessary to reduce the working force, the last employee hired shall be laid off first and when the force is again increased, the employees are to be returned to work in the reverse order in which they are laid off."

National Master Freight Agreement and Southern Conference Area Local Freight Forwarding and Garage Supplemental Agreement for period of 4-1-70 through 6-30-73. **Garage Supplemental Agreement:**

Article 40, Section 2: "Employees covered by this Agreement shall be construed to be Lead Mechanic, Mechanic, Mechanic Helper, Partsman and Serviceman, or any other classification of work when used to defeat the purpose of this Agreement."

Article 46, Section 2: "Regular employees on layoff status shall have seniority over probationary and casual employees and shall be returned to regular payroll when eight man-hours per day are worked in any five out of seven days."

Article 55—Job Descriptions: **Mechanic, Class A**—"Mechanic with prior qualifications proving him capable of performing job assignments which may occur in the shop

operations." **Mechanic, Class B**—"Can perform all duties of Class A; however, his duties do not include rebuilding of major components, major body repair and painting and frame machine as a B Mechanic." **Serviceman, A**—"Lubricate equipment, check batteries, check or change tires, pump fuel, change or clean filters, adjust brakes, check and repair lights, wash equipment and other general check lane services." **Serviceman, A**—"Shall also perform hostling or switching work on the yard as may be assigned to them, except where this is a violation of the Southern Conference Local Freight Forwarding Pickup and Delivery Agreement." **Serviceman, B**—"Shall perform all of the duties as specified in A Class Garage Serviceman and shall be limited to the operation of moving equipment to and from the shop for maintenance. They may unhook a tractor for the purpose of moving it to the shop for maintenance or service. They will not be permitted to participate in any way in the dock or road operation."

Article 55, Section 14: "All wash, grease, and tiremen shall be included in the classification of Serviceman."

As previously stated, our answer to Interrogatory No. 1 is Yes for past collective bargaining agreements; however, under our current Agreement only, our answer could be no, based on the following exception.

Southern Conference Area Garage Supplemental Agreement for period of April 1, 1970 through June 30, 1973, Article 55, Section 14 provides:

"At any time jobs are posted under this Agreement, except as outlined below, only those employees in the classification may bid on a job position. One exception being that any employee that has previously qualified for a higher classification with the same Employer may bid on such higher classification at any time bids are posted, and the second exception is when at any time new jobs are put on

and posted and/or on layoff any employee has the right to bid and such bidding is subject to such employee having been qualified under the rules established by the "Qualification Committee."

To our knowledge, no Qualification Committee referred to above has been established. Should any individual qualify under the above exception, in my opinion our answer as to the present existing contract could be "No." To our knowledge the Company or the Local Union have not been approached regarding the above.

2. Does the Company interpret any provisions of any past or present collective bargaining agreement as prohibiting an employee from transferring from a non-over-the-road driving or checking job to an over-the-road driving job at T.I.M.E. and carrying with him his terminal seniority?

Answer: Yes.

If the answer to Interrogatory Number 2 is affirmative, set forth the name of the collective bargaining agreement or agreements and each article and section therein which so provides or so provided, and in addition thereto, state the historical background and reason for this article and section of the agreement or agreements covering this subject.

Answer: See answer to Interrogatory No. 1 above.

3. Does the Company interpret any provisions of any past or present collective bargaining agreement as establishing classification seniority in Nashville as opposed to terminal seniority?

Answer: Yes.

If the answer to Interrogatory Number 3 is affirmative, set forth the name of the collective bargaining agreement or agreements and each article and section therein which so provides or so provided, and in addition thereto, state the historical background and reason for this article and section of the agreement or agreements covering this subject.

Answer: See answer to Interrogatory No. 1 above.

4. Please set forth the duties performed by persons holding the following jobs which are or were filled by the defendant T.I.M.E.-Nashville:

A) Over-the-road driver

Answer: Over-the-Road Driver operates heavy duty over-the-road equipment in Interstate Commerce, including local peddle operations as specified in our Over-The-Road Supplemental Agreement.

B) City driver or pick-up man

Answer: City Driver or Pickup Man, Checker, and Switcher: Performs driving duties of local pickup and delivery equipment within a specified radius, including the operation of heavy duty equipment for the purpose of pickup and delivery including checking work on the dock and duties of switching equipment in and around the terminal yard, operating local pickup and delivery as well as heavy duty equipment in a given terminal as provided for in the Local Cartage Agreement.

C) Checker

Answer: See answer to Interrogatory 4 B) above.

D) Switcher

Answer: See answer to Interrogatory 4 B) above.

E) Class B Mechanic

Answer: Class B Mechanic can perform all duties of Class A; however, his duties do not include rebuilding of major components, major body repair and painting, and frame machine.

F) Class A mechanic

Answer: Class A Mechanic. a mechanic with prior qualifications proving him capable of performing job assignments which may occur in shop operations and must be qualified to perform this work without direct supervision.

G) Serviceman

Answer: Serviceman—an employee who is not skilled and who assists A and B Mechanics, Body and Fender Repairmen in the performance of their work plus performs the work of washing, greasing, tire-changing, fueling, including the movement of equipment for maintenance purposes.

H) Tireman

Answer: See answer to Interrogatory 4 G) above.

I) Body Shop man

Answer: Body Shop Man—An employee who is skilled in the repairing, straightening, and refinishing of the body and fenders of motor equipment and/or including general body repair to over-the-road trailer equipment and local pickup and delivery body and fender work.

J) Parts man

Answer: Partsman—The duties of the Partsman shall be to issue parts upon request from the mechanics and to keep records of all parts so issued, stock and keep a record of all parts coming in, and shall be able to maintain a perpetual inventory of all parts, including other assigned terminal duties.

5. State what qualifications are necessary and/or required by T.I.M.E.-Nashville before an individual can be employed in each of the positions set forth in Interrogatory Number 4.

Answer: All classifications of employees mentioned are subject to the following qualifications:

(1) Meet insurance company blanket bonding requirements, (2) Be free from an undesirable history of compensable job-connected injuries or personal injuries or illnesses which would reasonably affect his ability to perform the job, (3) Must be free from an undesirable conviction record.

City Driver or Pickup and Delivery, Checker, and Switcher: Must meet standards as provided under Part 391 of the "Motor Carrier Safety Regulations," set forth by the U. S. Department of Transportation, Federal Highway Administration.

City Driver: In addition to the above, must be acquainted with the commercial zone of the city in which he is applying.

Class B Mechanic: Must be skilled, have a thorough knowledge of the principals of automotive mechanics and be able to perform the following duties with supervision: Maintenance, repair, welding, assembling and disassembling of automotive truck motors, accessories, vans, trailers, including all parts thereof, and prior experience.

Class A Mechanic: Must be skilled and have a thorough knowledge of the principals of automotive mechanics and be able to perform without supervision the following duties: The maintenance, repair, welding, assembling and disassembling of automobile and truck motors, accessories, chassis, trailers and vans, trailers, including all of the parts thereof, and prior experience in this type of work.

Servicemen and Tiremen: An employee who is not skilled and who assists A and B Mechanics in the performance of their work and performs such duties as washing,

greasing, tire-changing, fueling, etc. Must have prior experience.

Body Shop Man: Generally the same as Class A Mechanic, which includes prior experience and able to perform duties without supervision.

Partsman: The duties of Partsman shall be to issue parts upon requests from Mechanics, keep a record of all parts used, also stock and keep a record of all parts coming in and shall be able to maintain a perpetual inventory of all parts on hand, including other designated duties.

6. State and describe any tests that are administered by T.I.M.E.-Nashville as a prerequisite to employment in any of the positions set forth in Interrogatory Number 4.

For each such test given, state whether the test has been validated, that is, whether it has been determined that a person's score on the test will predict his performance on the job for which he is tested.

If any such tests have been validated, state the name and address of the person or firm who conducted the validation study, the date the validation study was conducted and the results of the validation study.

Answer: Examinations and tests for Classes A, B, C and D are set forth in Sub Part D, 391.31, 391.35 and Sub Part E, 391.41 of the aforementioned "Motor Carrier Safety Regulations." Successful completion is required as a prerequisite to employment on the "Road Test" and the "Physical Examination."

7. State the number of casuals by race and national origin who were employed by T.I.M.E.-Nashville in each job classification set forth in Interrogatory Number 4 during the calendar

year 1970. Set forth the name and address of each minority casual hired in 1970.

Answer:

A—63 American Caucasians; 1 American Negro

B, C, & D—54 American Caucasians; 1 American Negro

E—None

F—5 American Caucasians

G—None

H, I & J—None

No minority Casuals were hired.

8. State the number of new hires by race and national origin in each job position set out in Interrogatory Number 4 in each calendar year since 1967. Set forth the name, address and job in which hired of each minority hired in each calendar year since 1967.

Answer:

	1967	**1968**	**1969**	**1970**
A	None	None	None	None
B, C, & D	None	None	2 Amer. Caucas. 1 Amer. Negro	None
E	None	2 Amer. Negro	3 Amer. Caucas. 1 Amer. Negro	None
F	None	1 Amer. Caucas.	None	3 Amer. Caucas.
G	None	1 Amer. Caucas 2 Amer. Negro	1 Amer. Negro	None
H	None	None	None	None
I	None	None	None	None
J	None	None	None	None

9. Since 1965, have any minority group applicants been rejected or not considered for the job classifications described in Interrogatory Number 4? If the answer is yes, please list their names, addresses, dates of application, and the reasons for their being rejected or not considered.

Answer:

A—No

B, C, & D—No

E—Yes. George William Clark, 718 Minor St., Murfreesboro, Tenn.

Date of Application: 4/5/69

Given trial and discontinued due to inability to perform work and lack of interest for learning. Roy C. McReynolds, 1806 Beech Ave., Nashville, Tenn.

Date of Application: 11/23/68

Given trial and discontinued because he would not follow instructions, did not come to work on time and unsatisfactory production.

F—No

G—No

H—No

I—No

J—No

10. State whether T.I.M.E.-Nashville has ever hired a Negro line driver. If the answer is yes, list his name, address, phone number, initial hiring date, and current employment status.

Answer: No.

11. State whether T.I.M.E.-Nashville has ever hired a Negro city driver. If the answer is yes, list his name, address, phone number, initial hiring date, and current employment status.

Answer: No.

12. State whether T.I.M.E.-Nashville has ever hired a Negro dock worker, hostler or switcher. If the answer is yes, list for each job classification his name, address, phone number, initial hiring date, and current employment status.

Answer: Yes.

Checker: William Tom Fields, 279 North 8th St.,
Nashville, Tennessee
Phone No. 262-3814
Initial Hiring Date. 9/1/69
Resigned: 2/28/70

Six (6) Servicemen are bid as Switchers:

1. Charlie Collier, 1303 Caldwell Ave., Nashville, Tenn.
   Phone No. 292-0283
   Initial Hiring Date: 8/21/42
   Regular Switcher

2. Sam Gordon, 1006 Paris Ave., Nashville, Tenn.
   Phone No. 292-5494
   Initial Employment Date: 9/12/47

3. Albert Bender, 921 Battlefield Dr., Nashville, Tenn.
   Phone No. 297-8379
   Initial Hiring Date: 3/21/50
   Regular Switcher

4. James A. Keeling, 2411 Underwood St., Nashville, Tenn.
   Phone No. 242-5884
   Initial Hiring Date: 3/4/52
   Regular Switcher

5. John E. Buchanan, 316 Hancock St., Nashville, Tenn.
   Phone No. 228-6716
   Initial Hiring Date: 7/9/53
   Regular Switcher

6. Thomas R. Johnson, Route 1, Sunset Road, Brentwood, Tenn.
   Phone No. 795-2337
   Initial Hiring Date: 5/12/52
   Regular Switcher

13. State whether T.I.M.E.-Nashville has ever hired a Negro mechanic. If the answer is yes, list his name, address, phone number, initial hiring date, and current employment status.

Answer: Yes.

1. Harold E. Cole, 2431 Underwood St., Nashville
   Phone No. 254-6234
   Initial Hiring Date: 4/15/68
   Terminated 7/12/70 for being under the influence of alcoholic beverage while on duty and refusal to submit to examination.

2. Bob W. Washington, 4021 Kings Circle, Nashville, Tenn.
   Phone No. 242-0968
   Initial Hiring Date: 11/26/68
   Regular Grade "A" Mechanic

3. Roy C. McReynolds, 1806 Beech Ave., Nashville, Tenn.
   Phone No. 297-1235
   Initial Hiring Date: 1/6/69
   Terminated 1/20/69 because of unsatisfactory performance

4. Charles E. Dunn, 415—21st Ave., Springfield, Tenn.
   Phone No. 384-7929
   Initial Hiring Date: 3/10/69
   Regular Grade "A" Mechanic

5. George William Clark, 719 Minor St., Murfreesboro, Tenn.
   Phone No. 896-2876
   Initial Hiring Date: 5/9/69
   Terminated 6/5/69 because of unsatisfactory performance and lack of interest.

14. State whether T.I.M.E.-Nashville has ever hired a Negro office worker, supervisor or manager. If the answer is yes, list his or her name, address, phone number, initial hiring date and current employment status.

Answer: Yes.

1. Gloria Barbee, 730-26th Ave., North, Nashville, Tenn.
   Phone No. 292-6235
   Initial Hiring Date: 3/10/69
   Resigned: 11/7/69

15. State whether T.I.M.E.-Nashville has hired any city drivers that were not previously employed by T.I.M.E. on the dock. If the answer is yes, please list his name, address, phone number, initial hiring date, race or national origin, and current employment status.

Answer: No.

16. State the name, address, race or national origin, initial hiring date and classification seniority date of all city drivers working for T.I.M.E.-Nashville.

Answer:

Name	Address	Race	Initial Hiring Date	Class. Hiring Date
Albert S. Burnett	5024 Regent Dr. Nashville, Tennessee 37220	White	10-18-51	10-18-51
Thomas R. Burns	Nonaville Rd., Rt. 1 Juliet, Tennessee 37112	"	3-06-51	3-06-51
James H. Carney	3220 Avenall Dr. Nashville, Tennessee 37216	"	9-12-49	9-12-49
Johnny A. Coleman	212 Imperial Dr. Nashville, Tennessee 37211	"	9-14-51	9-14-51
Ollie W. Cunningham	408 Holston Dr. Smyrna, Tennessee 37167	"	9-27-51	9-27-51
Roy L. Davison	517 Drake Ave. Nashville, Tennessee 37211	"	4-23-46	4-23-46
Harold G. Dixon	Rt. 4, Box 100-B Nashville, Tennessee 37211	"	8-25-52	8-25-52
Charles E. Donnelly	416 McDonald Dr. Nashville, Tennessee 37217	"	10-21-49	10-21-49
Paul E. Etheridge	901 Denson Ave. Madison, Tennessee 37115	"	8-06-48	8-06-48
William L. Gannon	Rt. 2 Murfreesboro, Tennessee 37130	"	5-01-50	5-01-50
Roy E. Gifford	Rt. 1, Box 81 Hilham, Tennessee 38568	"	8-12-49	8-12-49
Clyde C. Hill	Rt. 1 Antioch, Tennessee 37013	"	6-20-47	6-20-47
James W. Hilliard	3923 East Ridge Dr. Nashville, Tennessee 37211	"	3-26-51	3-26-51

Name	Address	Race	Initial Hiring Date	Class. Hiring Date
Clarence Hinkle, Jr.	Rt. (Illegible) Donald Dr. (Illegible) Tennessee 37135	"	10-19-51	10-19-51
Albert F. Horton	130 Meridian Court Nashville, Tennessee 37207	"	2-01-41	2-01-41
Jesse A. Horton	Chestnut Mound, Tennessee 38552	"	8-24-53	8-24-53
Cordell Hunter	349 Rose St. Nashville, Tennessee 37211	"	8-20-50	8-20-50
Gerald V. Kittrell	1117 Meridian St. Nashville, Tennessee 37207	"	1-11-51	1-11-51
Ed K. Oakley	224 Dellrose Dr. Nashville, Tennessee 37214	"	7-02-52	7-02-52
James W. Oldham	2248 Craigmeade Circle Nashville, Tennessee 37214	"	7-08-52	7-08-52
Ruben A. Robinson	444 Lanier Dr. Madison, Tennessee 37115	"	1-12-52	1-12-52
Thomas M. Still	Rt. 1 Antioch, Tennessee 37013	"	9-06-49	9-06-49
James D. Strickland	Dry Creek Road, Rt. 4 Goodlettsville, Tennessee 37072	"	8-23-50	8-23-50
Charles A. Sloan	Rt. 1, Shell Rd. Goodlettsville, Tennessee 37072	"	7-24-50	7-24-50
Howard P. Vernon	214 Chamberlain St. Nashville, Tennessee 37209	"	4-21-52	4-21-52
Johnnie C. Wolfe	473 Debra Dr. Antioch, Tennessee 37013	"	7-15-53	7-15-53

17. State the name of every Negro employee of T.I.M.E.-Nashville who has ever applied for a job other than serviceman, the dates of their application and the jobs they applied for.

Answer: 1. Henry L. Davis asked for trial as Mechanic in 1967 (exact date unknown).

2. Raymond Rucker asked to be allowed to bid on "Partsman" job in June, 1966.

3. Joe Bradley, III, asked for "Partsman" job in June, 1966.

4. James Keeling asked for "Partsman" job in June of 1966.

18. Have any Negroes employed as servicemen applied and/or been considered for promotion or transfer to mechanic, dock, clerical or driver positions? If the answer is yes, please list their names, the dates of their application or the dates the vacancies arose for which they would have been considered for promotion or transfer. If any of these incumbents have been denied promotion or transfer to these positions, please state the reasons for denial.

Answer: Employees listed in Interrogatory No. 17 are servicemen and apply to Interrogatory No. 18. All were declined due to lack of background and experience which would apply to the jobs they requested.

19. State the Company's job assignment policy for incumbents in the serviceman job classification. Are incumbents rotated among the various job duties in that classification on a weekly basis?

Answer: All servicemen select hours and departments by bidding according to seniority. Once hours and departments are selected, each man in the department is subject to all work within the department. They are not rotated on a weekly basis.

20. Have any servicemen on lay-off status been re-called for regular or part-time work in any other job classification? If the answer is yes, please list their names, addresses, phone numbers, the dates of re-call and the job classifications to which re-called.

Answer: No.

21. Set forth the number of summer and/or temporary employees by job, race and national origin employed by T.I.M.E.-Nashville in the calendar years 1967, 1968, 1969 and 1970.

Answer: Casual and part-time employees working as replacements due to vacations and absentees:

	1967	1968
Road Drivers	None	None
Checkers &	71 American Caucasian	90 American Caucasian
City Drivers	7 American Negro	2 American Negro
Class "A" Mechanics	None	None
Class "B" Mechanics	None	1 American Caucasian
Servicemen	2 American Negro	2 American Caucasian 1 American Negro
Partsmen	2 American Caucasian	1 American Caucasian
	1969	**1970**
Road Drivers	61 American Caucasian 2 American Negro	63 American Caucasian 1 American Negro
Checkers & City Pickup Drivers	87 American Caucasian 2 American Negro	54 American Caucasian 1 American Negro
Class "A" Mechanics	1 American Caucasian 2 American Negro	None
Class "B" Mechanics	1 American Caucasian 2 American Negro	None
Servicemen	2 American Caucasian	None
Partsmen	None	None

22. State the employment statistics by race and national origin for the job classification "serviceman" at T.I.M.E.-Nashville on or about July 1, 1965.

Answer:

23 American Negro Servicemen

5 American Caucasian Servicemen

23. State the employment statistics by race and national origin and job position at T.I.M.E.-Nashville at the time of the filing of the complaint in this suit.

Answer:

Supervisors: 31 American Caucasian

Office Clerks: 24 American Caucasian

Line Drivers: 92 American Caucasian

Checkers & City
Pickup Drivers: 118 American Caucasian

Class "A" Mechanics: 32 American Caucasian

Class "B" Mechanics: 1 American Negro

Servicemen: 9 American Caucasian; 19 American Negro

Partsmen: 3 American Caucasian

24. State whether T.I.M.E.-Nashville maintained segregated locker and lunch room facilities in 1965, 1966 and 1967.

Answer: Segregated locker and lunch room facilities were maintained in 1965 and 1966. Integrated facilities were maintained in 1967 and since. Segregated facilities were abolished December 22, 1966.

T.I.M.E.-DC, INC.
By: JAMES A. PRATT
Director of Labor Relations and Personnel

(Jurat and affidavit of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

(Title Omitted in Printing)

Nos. CA. 5-868 and CA. 5-897 (Consolidated)

C. **Pre-Trial Order**

Pursuant to the Pre-Trial Notice and Order of this Court dated July 6, 1971, as amended by subsequent Orders, the parties to this action submit their proposed pre-trial order.

1. **Any Questions, Jurisdictional or Otherwise, Which Are Raised by Pending Motions.**

There are no questions, jurisdictional or otherwise, which are raised by pending motions in Civil Action No. 5-868, other than the question of whether there are indispensable or necessary parties who have not been joined, which is partially saved until trial by the order of the Court entered January 20, 1972.

In Civil Action No. 5-897, there is pending a motion to dismiss filed by Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which motion was reserved until the trial of the case by order of District Judge L. Clure Morton of the District Court for the Middle District of Tennessee, Nashville Division, on January 13, 1971, prior to the consolidation of the present two cases before this Court.

2. **A Concise Summary of the Claims and Defenses of Each Party.**

A. **Plaintiff's Case** (Civil Action No. 5-868).

Plaintiff is alleging that:

1. The defendant T.I.M.E. D.C. has followed a policy and practice of discrimination in employment against blacks and Spanish-surnamed persons by

(a) Refusing to recruit, hire, transfer and promote black and Spanish-surnamed persons on an equal basis with whites.

(b) Assigning blacks and Spanish-surnamed persons to lower paying, less desirable job classifications while reserving the higher paying, more desirable classifications for whites.

(c) Refusing to employ black and Spanish-surnamed persons as casuals (non-regular) employees on the same basis as whites.

(d) Refusing to promote or transfer black and Spanish-surnamed employees, or to provide an opportunity for such employees to transfer, to road driver, mechanic and managerial jobs on the same basis it has promoted, transferred and provided the opportunity to transfer for white employees to these jobs.

(e) Maintaining a system of promotions and transfers which perpetuates the effects of the company's past discrimination against black and Spanish-surnamed persons.

2. The defendant Teamsters, by itself and through designated sectional conferences and affiliated local unions, is a party to collective bargaining agreements with T.I.M.E. D.C. which prevent or tend to prevent black and Spanish-surnamed employees from transferring from the lower paying, less desirable job classifications to the higher paying more desirable job classifications, and thus perpetuate the effects of discrimination against black and Spanish-surnamed employees of the company.

3. The defendant T.I.M.E. D.C. has failed to take adequate affirmative steps to correct the continuing effects of its prior discriminatory practices.

4. The defendant Teamsters has failed to agree to modifications of its collective bargaining agreements necessary to prevent the perpetuation of T.I.M.E. D.C.'s discriminatory practices.

5. The acts and practices of the defendant T.I.M.E.-D.C. and the defendant Teamsters constitute a pattern or practice of resistance to the full enjoyment of the right of black and Spanish-surnamed persons to equal employment opportunities. This pattern or practice is of such nature and is intended to deny the full exercise of the rights secured by Section 703(a) and (c) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(c).

B. **Defendant's (T.I.M.E.-D.C., Inc.) Case (Civil Action No. 5-868).**

1. Defendant has not followed and does not follow either a practice or policy of discrimination in employment against blacks and Spanish-surnamed persons in recruitment, hiring, transfer, promotion, discharge, or job assignments, nor in hiring of casuals.

2. Defendant T.I.M.E.-D.C., Inc. has taken reasonably adequate affirmative steps to correct any alleged prior discriminatory practices of predecessor companies, commensurate with the availability of job openings and qualified minority applicants.

3. The acts, policies, and practices of Defendant T.I.M.E.-D.C., Inc. constitute neither a pattern nor practice of discrimination as prescribed by Sections 703 and 707 of the Civil Rights Act of 1964.

4. Plaintiff fails to state a cause of action as to Defendant T.I.M.E.-D.C., Inc.

5. The Plaintiff has failed to join necessary and/or indispensable parties needed for just adjudication of the issues within the meaning of Rule 19 F.R.C.P.

6. The Court lacks jurisdiction to act upon the suit of the Attorney General in the absence and showing of an overall pattern and practice of discrimination; and isolated practices in isolated locales do not constitute such pattern and practice.

7. The failure to exhaust administrative and contractual remedies bars the relief sought herein.

8. The allegations of Plaintiff are based in part upon evidence that is inadmissible under the rules of evidence and under the pre-trial order of February 25, 1971 herein.

9. The allegations of Plaintiff are based on claims that predate the said Civil Rights Act of July 2, 1965.

10. The allegations of Plaintiff are based upon alleged acts of precedessors that were beyond the control of Defendant T.I.M.E.-D.C., Inc.

11. The allegations of Plaintiff are based upon irrelevant statistical data that does not properly reflect (1) the varying skills needed in certain job categories nor (2) the relative decrease in available jobs due to reductions in force resulting from numerous mergers, changes of operations which resulted in transfers of employees between terminals of Defendant T.I.M.E.-D.C., Inc. and improved motor vehicle equipment and improved highways.

12. The allegations of Plaintiff are based on the existence of certain collective bargaining agreements the negotiations of which were not under Defendant T.I.M.E.-D.C., Inc.'s direct control.

13. The collective bargaining agreements to which Defendant T.I.M.E.-D.C., Inc. is a party do not contain seniority provisions that were designed to affect, nor do affect, any minority person differently than any white person.

14. The hiring and promotion policies of Defendant T.I.M.E.-D.C., Inc. have been and are based upon utilizing the best-qualified person for a particular job, and minority applicants, where not the successful applicants, have either been not qualified or not the best qualified for a particular job.

15. The allegations of Plaintiff are based upon statistical data that fails to properly reflect the effect of demographic and socio-economic factors which negates the accuracy of such data as a measure of minority persons available for employment in locations where T...M.E.-D.C. operates facilities.

C. **Defendants the International Brotherhood of Chauffeurs, Warehousemen and Helpers of America and the International Association of Machinists and Aerospace Workers, AFL-CIO's Case Civil Action No. 5-868.**

1. The Complaint fails to assert a claim against these defendants.

2. The Plaintiff has failed to join necessary parties needed for just adjudication within the meaning of Rule 19 F.R.C.P.

3. The failure to utilize or exhaust available administrative or contractual remedies bars this action.

4. The Court lacks jurisdiction to act upon the suit of the Attorney General in the absence and showing of an overall pattern and practice of discrimination; and isolated practices in isolated locales do not constitute such a pattern and practice.

5. The separate bargaining units and seniority lists within each such unit are lawfully established without regard to race.

6. The collective bargaining agreements have been and are enforced without regard to race.

7. General denial.

A. **Plaintiff's Case (Civil Action No. 5-897)**

1. The defendant T.I.M.E. D.C. (as successor to defendant T.I.M.E. Freight, Inc.) has followed a policy and practice of discrimination in employment against blacks at its Nashville, Tennessee terminal by

a. Maintaining departments and job classifications exclusively for whites and failing and refusing to hire blacks for these departments and job classifications.

b. Assigning black employees only to the lower paying, less desirable job of maintenance shop serviceman, and denying them compensation and promotion opportunities available to white employees.

c. Creating and maintaining by collective bargaining agreements, in conjunction with defendant Local 480 of the Teamsters, seniority systems which deny compensation and promotion opportunities to black employees which are available to white employees.

d. Failing to take adequate steps to correct the effects of its discriminatory policies and practices.

2. The defendant Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has followed a policy and practice of discrimination in employment against blacks because of their race by

d. Creating and maintaining by collective bargaining agreements, in conjunction with defendant T.I.M.E. D.C., seniority systems which deny compensation and promotion opportunities to black employees at T.I.M.E. D.C.'s Nashville terminal which are available to white employees.

e. Failing to take adequate steps to correct the effects of its discriminatory policies and practices.

3. The acts and practices of the defendant T.I.M.E. D.C. and the defendant Local 480, Teamsters, constitute a pattern

or practice of resistance to the full enjoyment of the right of black persons to equal employment opportunities. This pattern or practice is of such nature and is intended to deny the full exercise of the rights secured by Section 703(a) and (c) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a) (c).

B. **Defendant T.I.M.E. D.C. Inc.'s Case Civil Action No. 5-897**

Defendant T.I.M.E. D.C., Inc. adopts the same defenses in statement of Plaintiffs as in Civil Action No. 5-868.

C. **Defendant Local 480 of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America's Case Civil Action No. 5-897**

Defendant Local 480 asserts the same defenses which the other defendant unions assert in Civil Action No. 5-868, except there is no claim of absences of necessary parties.

3. **Itemized List of All Stipulations and Admissions of Fact Which Have Been Agreed Upon by the Parties.**

1. These are actions (now consolidated) brought by the Attorney General in the name of the United States seeking relief for alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*

2. This Court has jurisdiction under 28 U.S.C. 1345 and under Section 707(b) of the Civil Rights Act of 1964 42 U.S.C. 2000e-6(b), except the defendants challenge this Court's jurisdiction unless a pattern or practice of discrimination is first shown.

3. The defendant T.I.M.E. D.C., Inc. is a Delaware corporation with corporate offices in Lubbock, Texas, which offers serv-

ices to the general public as a common motor carrier of general commodities operating in interstate commerce, along the routes and between the terminals and relay stations as shown on the operational map attached hereto as Appendix A.

4. The defendant T.I.M.E. D.C., Inc. is an employer and is engaged in an industry affecting commerce within the meaning of Section 701(b) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-(b).

5. The defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the Teamsters) is an unincoporated association doing business as a labor organization in this district.

6. Certain local unions chartered by the Teamsters are parties to collective bargaining agreements with T.I.M.E. D.C., Inc., and T.I.M.E. D.C. is party to certain National and Supplemental agreements with certain negotiating committees and local unions affiliated with the Teamsters, all as shown on attached Appendix B.

7. The defendant Teamsters is a labor organization within the meaning of Section 701(d) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-(d).

8. The defendant International Association of Machinists and Aerospace Workers, AFL-CIO (hereafter referred to as the Machinists) is an unincorporated association doing business as a labor organization in this district.

9. The defendant Machinists, by itself and affiliated local and district lodges, is a party to collective bargaining agreements with defendant T.I.M.E. D.C., Inc.

10. The defendant Machinists is a labor organization within the meaning of Section 701(d) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-(d).

11. Defendant Local 480 is an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and is an unincorporated association with its principal office located in Nashville, Tennessee. It is the exclusive bargaining representative for separate bargaining units of employees of the defendant T.I.M.E. D.C., Inc. at its Nashville facility, as set forth in Appendix B hereto.

12. Defendant Local 480 is a labor organization within the meaning of Section 701(d) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-(d).

13. Defendant T.I.M.E. D.C., Inc. presently operates in 26 states and three Canadian provinces, has 51 terminals, three offline sales offices, four relay stations and one general office, as shown on Appendix C, attached. As of March 31, 1971, T.I.M.E. D.C. had 6472 employees. This includes employees in the following status: regular-active, leave of absence (personal illness), laidoff, leave of absence (industrial injury) and leave of absence (personal reasons). Of these employees, 314 were black and 257 were Spanish-surnamed Americans.

14. As of March 31, 1971, there were 134 different job categories at T.I.M.E. D.C. These job categories, the total employees in each category, and the total employees in each category by race and national origin are as follows:

Job Category	Total	White	Negro	SSA	Am. Ind.	Oriental
Apprentice Mechanic	4	3		1		
City Drivers						
City Heavy Duty Dr.	419	362	22	32	1	2
City Pud Dr.	874	755	57	56	5	1
Dockmen						
Dockmen	1135	932	107	85	7	4
Swamper	1	1				

Job Category	Total	White	Negro	SSA	Am. Ind.	Oriental
Foremen						
Dock Foreman	146	142	2	2		
Shop Foreman	26	26				
Tire Foreman	1	1				
Working Foreman—Dock	23	22		1		
Working Foreman—Shop	42	39	1	1	1	
Guard	2	2				
Hostler	117	102	9	5	1	
Janitor						
Janitor—Shop	2		2			
Janitor—Terminal	26	11	12	3		
Line Driver	1828	1802	8	5	12	1
Mechanic	325	297	11	12	5	
Mechanic Helper	11	9			2	
Office						
Billing Clerk	76	66	1	4		5
Cashier—Terminal	58	55		2		1
Cashier—LGO	1	1				
City Dispatcher—Hourly	7	6		1		
Claims Clerk	9	8		1		
Claims Investigator	6	6				
Claims Prevention Clerk	1	1				
Claims Prevention	3	3				
Collections Clerk	2	2				
Computer Opr.	9	9				
Confidential Sec'y	19	19				
Credit Union Clerk	2	2				
Data Control Clerk	5	4		1		
Executive Sec'y	3	3				

Job Category	Total	White	Negro	SSA	Am. Ind.	Oriental
General Acctg. Clerk	8	8				
Internal Auditor	1	1				
Keypunch Operator	15	15				
Keypunch Opr.—Revenue	9	9				
Licensing Clerk	2	2				
Line Dispatcher—Hourly	5	5				
Maint. Clerk	7	7				
Market Analyst	1		1			
Nat'l Accounts Repr.	2	2				
OS&D & Trace Clerk	103	100	1	2		
Payroll Clerk	4	4				
Personnel Clerk	2	2				
Personnel Sec'y	1	1				
Purchasing Agent	7	7				
Purchasing Clerk	3	3				
Rate Analyst	2	2				
Rate Auditor	8	8				
Rate Clerk	88	81		6		1
Research Analyst	2	2				
Revenue Accountant	1	1				
Revenue Acctg. Clerk	13	10	2	1		
Revenue Acctg. Clerk (Terminal)	66	62	3	1		
Safety Clerk	3	3				
Sales Clerk—Terminal	5	5				
Sales Clerk—LGO	1	1				
Salvage House Clerk	5	3	1	1		
Services Clerk	14	12	1	1		
Service Controller	12	11		1		
Service Control Clerk	5	5				
Shop Clerk—Terminal	10	10				
Systems Analyst	3	3				
Systems Programmer	9	8				1

Job Category	Total	White	Negro	SSA	Am. Ind.	Oriental
Tax Clerk	3	3				
Terminal Opr. & Serv. Clerk	171	164	2	4		1
Traffic Clerk	7	6	1			
Treasurer's Clerk	2	2				
Printer & Maint. Eng.	4	3	1			
Salesmen						
Traffic Repr.	126	124		2		
Shopmen						
Partsmen	29	26	2	1		
Servicemen	156	80	57	19		
Tiremen	23	12	8	2	1	
Supervisors						
Adm. Asst.—Sales & Marketing	1	1				
Asst. Controller	1	1				
Asst. Keypunch Supervisor	1	1				
Asst. Mgr. of Claims	1	1				
Asst. Office Mgr.	5	5				
Asst. Shop Supt.	1	1				
Asst. Terminal Mgr.	6	5		1		
Asst. Traffic Mgr.	5	5				
Chairman of the Board	1	1				
City Dr. Supervisor	1	1				
Collections Supervisor	1	1				
Controller	1	1				
Credit Union Supervisor	1	1				
Data Control Supervisor	1	1				
Director of Claims	1	1				
Dir. of Data Processing	1	1				
Dir. of Operations—Region	3	3				
Dir. of Pers. & Labor Relations	1	1				

Job Category	Total	White	Negro	SSA	Am. Ind.	Oriental
Director of Sales—Region	3	3				
Director of Traffic	1	1				
Director of Trans.	1	1				
District Sales Mgr.	23	23				
Keypunch Supervisor	1	1				
Labor Relations Supv.	1	1				
Line Driver Supervisor	63	61	1	1		
Manager—Claims	1	1				
Mgr.—Claims Prevention	1	1				
Mgr.—Gov't Traffic	2	2				
Mgr.—Internat'l Sales	1	1				
Mgr. of Labor	1	1				
Mgr. of Licensing	1	1				
Mgr.—Maint. Control	1	1				
Mgr.—Nat'l Accounts	1	1				
Mgr.—Purchasing & Services	1	1				
Mgr.—Real Estate	1	1				
Mgr.—Research & Engr.	1	1				
Mgr.—Safety	1	1				
Mgr.—Salvage House	1	1				
Mgr.—Service Control	1	1				
Mgr.—Systems & Progm.	1	1				
Office Manager	29	29				
Payroll Supervisor	1	1				
Personnel Manager	1	1				
President	2	2				
Regional Traffic Mgr.	4	4				
Relay Manager	1	1				
Revenue Acctg. Supv.	1	1				
Safety Supv.	8	7				1
Sec'y—Corporate	1	1				
Senior Safety Supv.	1	1				
Senior Supervisor	5	5				

Job Category	Total	White	Negro	SSA	Am. Ind.	Oriental
Shop Superintendent	13	13				
Supervisor Trainee	3	3				
Terminal Manager	48	48				
Terminal Opr. Mgr.	30	29			1	
Treasurer	1	1				
Vice-President	1	1				
Vice-Pres. Maint. & Property	1	1				
Vice-Pres. Region	3	3				
Vice-Pres. Traffic	1	1				
Unidentified Positions						
No. 215	1	1				
No. 257	1		1			
Total	6472	5847	314	257	37	17

15. If a regularly employed employee not on layoff moves to a job covered by one collective bargaining agreement from a job covered by another collective bargaining agreement at one of T.I.M.E. D.C.'s terminals, it is the uniform policy and practice, in every known instance, that such employee establishes his seniority for purposes of bidding and layoff in the job he transfers to as of the date of the transfer and gives up such seniority for purposes of bidding and layoff in his old job as of that date; however, he maintains his company seniority for purposes of fringe benefits, such as vacation rights. Certain pension benefits and health and welfare benefits provided by specific collective bargaining agreements differ from those provided by other collective bargaining agreements. Accordingly, when employees change from one job to another and also transfer from one labor organization to another, such transfer may result in the forfeiture or material change in the employee pension and health and welfare benefits. These policies and practices apply to all employees regardless of race.

16. All employees of the company represented by affiliates of the Teamsters or the Machinists, regardless of race, receive the wages, hours and working conditions of employment as provided in the collective bargaining agreements listed in Appendix B.

17. The government does not allege and there is no affirmative evidence that the bargaining units were established for the purpose of discriminating on the basis of race or national origin.

18. The provisions of modified system seniority as provided in the Southern Conference Area Over-the-Road Supplemental Agreement are as follows:

a. The Employer will prepare a seniority roster for all Road Drivers who have seniority under the Road Agreement showing the drivers' full company seniority.

b. Drivers will use company seniority for all purposes at home terminal, but may only move to a foreign terminal when laid off due to reduction in force at home terminal, or at the closing of a domicile point, or in the event of a new point of domicile or as approved by Change of Operation Committee.

c. When a driver has been laid off, he will have a thirty (30) day period in which to exercise his seniority at some other terminal at his option.

d. A driver wishing to exercise his seniority due to layoff, will give advance notice to the terminal manager of the other station; which notice shall be posted on the bulletin board for a forty-eight (48) hour period before a bump is effective.

e. Drivers who have been laid off from their original point of domicile and who have exercised their seniority at some other terminal shall be offered an opportunity to return to that point before new employees are hired.

f. Drivers on lay-off who have not exercised their seniority at some other terminal shall be recalled for work in accordance with the Road Agreement. However, if recall is to a foreign terminal he will have the option of turning down the recall and thereafter, he will be entitled to recall at his home terminal only.

g. Any employees of a company who under the terms of the 1970-73 Contract have voted to have Southern Conference Modified Seniority who did not already have Southern Conference Modified Seniority, and who are on lay-off and who have not had an opportunity to exercise their seniority into the other area will have a thirty (30) day period from the date of the adoption of these rules in which to exercise their seniority over any junior employee in the other area. The thirty (30) day period shall commence September 21, 1970.

h. An employer shall not lay off an employee if the employee averages $150.00 per week for thirty (30) days except as provided in Article 5, Section 4 of the National Master etc. contract, or for a provable economic lay-off.

19. The parties are unaware of any grievances filed against T.I.M.E. D.C., Inc. or any local of the International Brotherhood of Teamsters or against the International Brotherhood of Teamsters itself under Article 38 of the National Master Contract between T.I.M.E. DC, Inc. and the local unions who are signatories to the contracts.

20. The parties agree that Appendix D, attached, contains authentic excerpts from the legislative history of Title VII and I of the Civil Rights Act of 1964.

United States Department of Justice
Washington, D.C. 20530

April 10, 1972

Robert D. Schuler, Esquire
Matheson, Bieneman, Veale
& Parr
Suite 1700
One Woodward Avenue
Detroit, Michigan 48226

Re: United States v. T.I.M.E. D.C., Inc., et al.,
Nos. 5-868, 5-897, N.D. Tex., Lubbock Div.

Dear Bob:

With respect to the appendix (pp. A-14-A-31) and other attachment (pp. 30-31) enclosed with your letter to us of March 24, 1972, we will stipulate that:

1. Pages A-14-A-27 of the appendix contain authentic and genuine excerpts from the "Legislative History of Titles VII and XI of the Civil Rights Act of 1964," which was prepared by the United States Equal Employment Opportunity Commission and printed by the United States Government Printing Office.

2. Pages A-28-A-31 of the appendix contain genuine and authentic excerpts from the Congressional Record not found in the legislative history compiled by the EEOC.

3. The quoted statement in the first full paragraph of page 30 of the attachment is an authentic and genuine statement from B.L.S. Report No. 394 (Departments of Commerce and Labor),

"The Social and Economic Status of Negroes in the United States, 1970", page 67.

4. The quoted statement in footnote 35 of page 30 of the attachment is an authentic and genuine statement from U.S. Department of Labor, Bulletin No. 1511, June 1966, "The Negroes in the United States," p. 43.

We will further stipulate that:

1. The "Appendix G. Minority Group Employment" table enclosed with this letter is an authentic and genuine table from 1968 Annual Report, United States Civil Service Commission, "Challenge and Change," p. 77.

2. The "Table Number 1-13 Department of Justice" table enclosed with this letter is an authentic and genuine table from U.S. Civil Service Commission, "Study of Minority Group Employment in the Federal Government 1967," p. 15.

Sincerely,

/s/ WILLIAM B. FENTON
Attorney
Employment Section

Enclosures (2)

cc: Mr. Frank M. Garrison
Mr. C. F. Hutchinson
Mr. L.N.D. Wells, Jr.

4. **Plaintiff's Itemized List of the Contested Ultimate Issues of Fact.**

(Civil Action No. 5-868)

1. Whether T.I.M.E. D.C. has followed a policy and practice of discrimination in employment against black and Spanish-surnamed persons.

2. Whether T.I.M.E. D.C. has refused to recruit, hire, transfer and promote black and Spanish-surnamed persons on an equal basis with whites.

3(a). Whether T.I.M.E. D.C. traditionally followed a policy or practice of hiring and assigning black and Spanish-surnamed persons only to lower paying, less desirable job classifications while reserving the higher paying, more desirable classifications for whites.

(b). Whether, if T.I.M.E. D.C. traditionally followed such a policy or practice of hiring and assignment, this policy or practice continued until the filing of the present action.

(c). Whether, if T.I.M.E. D.C. has followed a policy or practice of hiring and assigning black and Spanish-surnamed persons only to lower paying, less desirable job classifications while reserving the higher paying, more desirable classifications for whites, the seniority and transfer systems which have been in effect at the company have perpetuated the effects of this policy or practice.

4. Whether T.I.M.E. D.C. has refused to employ black and Spanish-surnamed persons as casuals (non-regular) employees on the same basis as whites.

5. Whether T.I.M.E. D.C. has refused to promte or transfer black and Spanish-surnamed employees, or to provide an opportunity for such employees to transfer, to road driver, mechanic and managerial jobs on the same basis it has promoted, transferred and provided the opportunity to transfer for white employees to these jobs.

6. Whether T.I.M.E. D.C. maintains a system of promotions and transfers which perpetuates the effects of the company's alleged past discrimination against black and Spanish-surnamed persons.

7. Whether the defendant Teamsters, by itself and through designated sectional conferences and affiliated local unions, is a party to collective bargaining agreements with T.I.M.E. D.C. which prevent or tend to prevent black and Spanish-surnamed employees from transferring from lower paying, less desirable job classifications to higher paying, more desirable job classifications, and thus perpetuate the effects of discrimination against black and Spanish-surnamed employees of the company.

8. Whether the defendant Machinists, by itself and through affiliated local and district lodges, is a party to collective bargaining agreements with T.I.M.E. D.C. which prevent or tend to prevent black and Spanish-surnamed employees from transferring from lower paying, less desirable job classifications to higher paying, more desirable job classifications, and thus perpetuate the effects of discrimination against black and Spanish-surnamed employees of the company.

9. Whether T.I.M.E. D.C. has failed to take adequate affirmative steps to correct the continuing effects of its alleged prior discriminatory practices.

10. Whether the Teamsters has failed to agree to modifications of its collective bargaining agreements necessary to prevent the perpetuation of T.I.M.E. D.C.'s alleged discriminatory employment practices.

11. Whether the Machinists has failed to agree to modifications of its collective bargaining agreements necessary to prevent the perpetuation of T.I.M.E. D.C.'s alleged discriminatory employment practices.

(Civil Action No. 5-897)

1. Whether T.I.M.E. D.C. has followed a policy and practice of discrimination in employment against blacks at its Nashville, Tennessee terminal.

2. Whether T.I.M.E. D.C. (Nashville) has traditionally maintained departments and job classifications exclusively for whites and failed and refused to hire blacks for these departments and job classifications.

3(a). Whether T.I.M.E. D.C. (Nashville) has traditionally followed a policy or practice of hiring and assigning black employees only to the lower paying, less desirable jobs of maintenance shop serviceman, and denied them compensation and promotion opportunities available to white employees.

(b). Whether, if T.I.M.E. D.C. (Nashville) has traditionally followed a policy or practice of hiring and assigning black employees only to the job of maintenance shop serviceman, the seniority and transfer systems which have been in effect at the company have perpetuated the effects of this policy or practice.

4. Whether T.I.M.E. D.C. (Nashville) has created and maintained, in conjunction with Local 480 of the Teamsters, seniority systems which deny compensation and promotion opportunities to black employees which are available to white employees.

5. Whether T.I.M.E. D.C. (Nashville) has failed to take adequate steps to correct the effects of its alleged discriminatory policies and practices.

6. Whether Local 480 of the Teamsters had followed a policy and practice of discrimination in employment against blacks employed at T.I.M.E. D.C.'s Nashville terminal.

7. Whether Local 480 has created and maintained by collective bargaining agreements, in conjunction with defendant T.I.M.E. D.C., seniority systems which deny compensation and promotion opportunities to black employees at T.I.M.E. D.C.'s Nashville terminal which are available to white employees.

8. Whether Local 480 has failed to take adequate steps to correct the effects of its alleged discriminatory policies and practices.

4. Itemized List of the Contested Ultimate Issues of Fact

(Civil Action No. 5-868)

Counter-Statement of Contested Ultimate Issues of Fact
By Defendant T.I.M.E.-DC., Inc.

1. Whether Defendant has followed a policy and practice of discrimination in employment against blacks and Spanish-surnamed persons in recruitment, hiring, transfer, promotion, discharge, job assignments or in hiring of casuals.

2. Whether Defendant T.I.M.E.-DC, Inc. has taken reasonably adequate affirmative steps to correct any alleged prior discriminatory practices of predecessor companies, commensurate with the availability of job openings and qualified minority applicants.

3. Whether the allegations of Plaintiff are based in whole or part on claims that pre-date the effective date of the Civil Rights Act of July 2, 1965.

4. Whether the allegations of Plaintiff are based upon alleged acts of predecessors that were beyond the control of Defendant T.I.M.E.-DC, Inc.

5. Whether the allegations of Plaintiff are based upon statistical data that fails to properly reflect the varying skills needed in certain job categories or the relative decrease in available jobs at T.I.M.E.-DC, Inc. due to reductions in force resulting from numerous mergers, changes of operations which result in transfers of employees between terminals of Defendant T.I.M.E.-DC, Inc., and improved motor vehicle equipment and improved highways.

6. Whether the allegations of Plaintiff are based on the existence of certain collective bargaining agreements, the negotiation of which were not under Defendant T.I.M.E.-DC. Inc.'s direct control.

7. Whether the collective bargaining agreements to which Defendant T.I.M.E.-DC, Inc. is a party contain seniority provisions that were designed to affect, or do affect, any minority person differently than any white person.

8. Whether the hiring and promotion policies of T.I.M.E.-DC, Inc. have been and are based upon utilizing the best qualified person for a particular job, and whether minority applicants, where not the successful applicants, have either been not qualified, or not the best qualified for a particular job.

9. Whether the alleged discriminatee witnesses of Plaintiff have exhausted their contractual and administrative remedies relating to past and present allegations of discrimination.

10. Whether the provisions of the labor contracts in effect create obligations on the part of Defendant T.I.M.E.-DC, Inc. and upon the local unions who are also signatory to said contracts.

11. Whether the labor contracts in effect between Defendant T.I.M.E.-DC, Inc. and various local unions affiliated with the International Brotherhood of Teamsters and the International Association of Machinists impose obligations on the International Brotherhood of Teamsters and the International Association of Machinists.

12. Whether the allegations of Plaintiff are based upon statistical data that fails to reflect the effect of demographic and socio-economic factors which negates the accuracy of such data as a measure of minority persons available for employment in locations at which T.I.M.E.-DC, Inc. operates facilities.

(Civil Action No. 5-897)

1. T.I.M.E.-DC, Inc. adopts as its counter-statement of contested ultimate issues of fact the same counter-statement of contested ultimate issues of fact as set forth as to Civil Action No. 5-868.

Plaintiff's

5. **Itemized List of Each Contested Issue of Law.**

(Civil Action Numbers 5-868, 5-897)

1. Whether T.I.M.E. D.C. has failed or refused to hire blacks and Spanish-surnamed persons, or otherwise discriminated against blacks and Spanish-surnamed persons with respect to their compensation, terms, conditions or privileges of employment, because of their race, color or national origin, in violation of Section 703(a)(1) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(1).

2. Whether T.I.M.E. D.C. has limited, segregated or classified its black and Spanish-surnamed employees in any way which would deprive or tend to deprive them of employment opportunities or otherwise adversely affect their status as employees, because of their race, color or national origin, in violation of Section 703(a)(2) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2 (a)(2).

3. Whether the Teamsters, the Machinists and Local 480 of the Teamsters have discriminated against blacks or Spanish-surnamed persons because of their race, color or national origin in violation of Section 703(c)(1) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(c)(1).

4. Whether the Teamsters, the Machinists and Local 480 of the Teamsters have limited or classified their membership, or

classified for employment blacks or Spanish-surnamed employees or applicants for employment at T.I.M.E. D.C. in any way which would deprive or tend to deprive these employees or applicants for employment or employment opportunities or otherwise adversely affect their status as employees or applicants for employment, because of their race, color or national origin in violation of Section 703(c)(2) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(c)(2).

5. Whether the Teamsters, the Machinists and Local 480 of the Teamsters have caused or attempted to cause T.I.M.E. D.C. to discriminate against black or Spanish-surnamed employees or applicants for employment, because of their race, color or national origin in violation of Section 703(c)(3) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(c)(3).

6. Whether, if T.I.M.E. D.C. has followed a discriminatory policy or practice of hiring and assigning black and Spanish-surnamed persons only to lower paying, less desirable job classifications while reserving the higher paying, more desirable jobs for whites, the seniority and transfer systems in effect at T.I.M.E. D.C. perpetuate the effects of this discrimination in violation of Section 703 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2.

7. Whether the acts and practices of T.I.M.E. D.C., the Teamsters, the Machinists and Local 480 of the Teamsters, alleged by plaintiff to be discriminatory, constitute a pattern or practice of resistance to the full enjoyment of the right of black and Spanish-surnamed persons to equal employment opportunities, and that this pattern or practice is of such nature and is intended to deny the full exercise of the rights secured by Section 703(a) and (c) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(c), in violation of Section 707 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6.

8. If the defendants are in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, what is the appropriate relief.

5. **Itemized List of Each Contested Issue of Law**

(Civil Action Numbers 5-868, 5-897)

Counter-Statement of Contested Issues of Law
By Defendant T.I.M.E.-DC, Inc.

1. Whether T.I.M.E.-DC has failed or refused to hire blacks and Spanish-surnamed persons, or otherwise discriminated against blacks and Spanish-surnamed persons with respect to their compensation, terms, conditions or privileges of employment, because of their race, color or national origin, in violation of Section 703(a)(1) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(1).

2. Whether T.I.M.E.-DC has limited, segregated or classified its black and Spanish-surnamed employees in any way which would deprive or tend to deprive them of employment opportunities or otherwise adversely affect their status as employees, because of their race, color or national origin, in violation of Section 703(a)(2) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(2).

3. Whether the acts and practices of T.I.M.E.-DC, the Teamsters, the Machinists and Local 480 of the Teamsters, alleged by Plaintiff to be discriminatory constitute a pattern or practice of resistance to the full enjoyment of the right of black and Spanish-surnamed persons to equal employment opportunities, and that this pattern or practice is of such nature and is intended to deny the full exercise of the rights secured by Section 703(a) and (c) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(c), in violation of Section 707 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6, and if the defendants are in violation of Section 707 of Title VII of the Civil Rights Act of 1964, what is the appropriate relief under said Section 707 of Title VII of the Civil Rights Act of 1964.

4. Whether T.I.M.E.-DC, Inc. or any labor organization should be required to grant preferential treatment to any individual or to any group because of the race, color or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color or national origin employed by any employer, admitted to membership or classified by any labor organization, or admitted to or employed in any apprenticeship or other training program in comparison with the total number or percentage of persons of such race, color or national origin in any community, state, section or other area or in the available work force in any community, state, section or other area contrary to the provisions of Section 703(j) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(j).

5. Whether Plaintiff states a cause of action as to Defendant T.I.M.E.-DC, Inc. and whether Plaintiff has joined all necessary and/or indispensable parties.

6. Whether the court has jurisdiction of the subject matter when isolated instances of alleged discrimination rather than system-wide discrimination are alleged.

7. Whether failure to exhaust administrative and contractual remedies bars the relief sought herein.

8. Whether the allegations of Plaintiff are based in part upon evidence that is inadmissible under the rules of evidence and under the pre-trial order of February 25, 1971 herein.

9. Whether the provisions of the Civil Rights Act of July 2, 1965 are retroactive.

10. Whether the alleged acts of predecessors of Defendant T.I.M.E.-DC, Inc. were beyond the control of said Defendant and whether T.I.M.E.-DC, Inc. is responsible for alleged acts of its predecessors.

11. Whether the allegations of Plaintiff are based in part upon irrelevant statistical data.

12. Whether the Defendant T.I.M.E.-DC, Inc. is responsible for alleged discriminatory provisions in collective bargaining agreements which were negotiated by predecessor companies or otherwise not negotiated under Defendant T.I.M.E.-DC, Inc.'s direct control.

13. Whether hiring and promotion policies are reasonable and non-discriminatory when based upon hiring and utilizing the best qualified person for a particular job.

6. **Exhibits, Witnesses and Designated Portions of Depositions and Interrogatories to Be Used as Evidence by Each Party.**

A. **Plaintiff**

The exhibits, witnesses and designated portions of depositions and interrogatories which plaintiff intends to use in its case-in-chief are as follows. Additional exhibits, witnesses and designated portions of depositions and interrogatories may be used by plaintiff in its rebuttal case.

1. **Exhibits**

(The following exhibits were marked for identification in conjunction with the depositions taken in this case. The depositions identification number or letter is listed in parentheses after the exhibit).

National Master Freight Agreement and Local 70 Pickup and Delivery Supplemental Agreement for the Period of July 1, 1964 to March 31, 1967 (2).

National Master Freight Agreement and Local 85 Pickup and Delivery Supplemental Agreement Covering Over-the-Road

and Local Cartage Employees . . . for the Period of April 1, 1967 through March 31, 1970 (3).

Answer to Questionnaire by Oakland (or Hayward) terminal to Lubbock general office with respect to employment of casuals (4).

Pages P-1 through P-4 and SD-21 of Manual of Instructions of T.I.M.E. DC (5).

Seniority lists for Oakland (Hayward) terminal, December 1970 (6).

Partial personnel file of Donald James Oviatt (7).

Partial personnel file of William Howard Hylton (8).

List showing minority employees at Oakland (Hayward) terminal as of September 3, 1970 (9).

Application for employment of Donald Wesley Bridges (10).

Personnel file of Edward John Pistante (11).

Seniority list for dock and city drivers at Oakland (Hayward) terminal, 1969, with identity key of former company (12).

Seniority list of dock and city drivers at Oakland (Hayward) terminal, 1970-71, with identity key of former company (13).

Chart drawn by Mr. Wilson, showing location and layout of Denver terminal (15).

T.I.M.E. DC, new hire check sheet (16).

T.I.M.E. DC, written examination for drivers (17).

T.I.M.E. DC, application for employment form (18).

T.I.M.E. DC, motor vehicle driver's certification of violations (19).

Sheet for recording record of road test (20).

T.I.M.E. DC, certification of road test (21).

T.I.M.E. DC, telephone check sheet (22).

T.I.M.E. DC, previous employer reference sheet (23).

Thurstone Interest Schedule (24).

Wonderlic Personnel Test (25).

Strong Vocational Interest Blank for Men (26).

1971 bid sheet for dock, pickup and delivery at Denver terminal (27).

Answer to questionnaire by Denver terminal to Lubbock general office with respect to employment of casuals (28).

Seniority lists for Denver terminal (1970) (29).

Partial personnel file of Herman Reichert (31).

Employment application of Feliberto Trujillo, Jr. (36).

Partial personnel file of Joseph Quintana (37).

Partial personnel file of Edgar L. Glenn (38).

Employment application of Earmitt C. Jones (39).

Partial personnel file of Gibert E. Vigil (40).

Inter-office correspondence pertaining to Lenard W. Harrison, dated April 16, 1968 (A). 40(A)

Inter-office correspondence pertaining to Lenard W. Harrison, dated May 14, 1968 (B). 40(B)

Complaint from Earmitt Jones to Colorado Civil Rights Commission (C). 40(C)

Seniority lists for Vernon terminal (LAX), 1970-71 (41).

Seniority lists for Montebello terminal (LOS), 1970 (42).

Answer to questionnaire by Vernon terminal to Lubbock general office with respect to employment of casuals (43).

Answer to questionnaire by Montebello terminal to Lubbock general office with respect to employment of casuals (44).

Partial personnel file of James Stevens (formerly known as James Steven Kuznetzoff) (45).

Personnel file of Dominick David Aiello (46).

Western States Area Office Employees Supplemental Agreement (47).

Partial personnel file of Frederick L. Coghill (48).

Partial personnel file of Wayne A. Zurbrugg (49).

Partial personnel file of Emmett Ronald Morris (50).

Letter to Department of Industrial Relations, California, dated June 2, 1969, from Ray C. Cloward, terminal manager (51).

Safety award transmittal to George J. Taylor (52).

Complaint from George J. Taylor to California Fair Employment Practice Commission (53).

Resignation notice of George J. Taylor (54).

Partial personnel file of William R. Jorgenson (57).

Partial personnel file of Jere L. Morrison (58).

Letter to V. L. Watkins, Terminal Manager, from John T. Williams, Business Representative, Local 208, Teamsters Union, dated June 30, 1969 (59).

Letter to John Williams from J. P. Almaraz, Elmer L. Banuelos, and others, dated March 19, 1969 (60).

Letter to John T. Williams, Business Representative, Local 208, Teamsters Union, from Jack W. Stephenson, Labor Department, T.I.M.E. DC, dated July 21, 1969 (61).

Safe Driver Award for Thomas White, dated February 7, 1969 (62).

Document showing black membership of Local 224 of Teamsters Union by companies, furnished by Robert Porter, Secretary-Treasurer of Local 224 (63).

Employment application of George J. Taylor, dated September 6, 1966 (F). 63(F)

Employer reference check to Sherman Poultry on George Taylor (G). 63(G)

Diagram of Nashville terminal (64).

Seniority lists for Nashville terminal, 1970 (65).

Seniority lists for Nashville terminal, 1971 (66).

Changes in supervisory personnel at Nashville from merger of Southeastern Motor Truck Lines and T.I.M.E. Freight, Inc. (May 1956) to date (67).

History of senior supervisory positions since T.I.M.E.-Southeastern (Nashville) (68).

Attachment to notice of depositions: item 2, supervisory personnel (69).

Answer to questionnaire by Nashville terminal to Lubbock general office with respect to employment of casuals (70).

Attachment to notice of depositions: item 7, all personnel information available at T.I.M.E. DC's Nashville terminal on

present employees and those who have worked for the company since 1965 who have criminal records or who have had relatives employed, either as regular or casual employees (terminal) (71).

Attachment to notice of depositions; item 7, personnel files on anyone who has worked since 1965 who had relatives employed or had criminal record (shop) (72).

Item Number 8, employees who transferred from one seniority list to another, or to/from a non-collective bargaining position (73).

Employment application of Charles Robert Brumley (75).

Employment application of Lawrence E. Gibson (76).

Partial personnel file of J. C. Chapman (78).

Employment application of James W. Wilkerson (80).

Letter to Houston L. Rowlett from E. C. Yost, Line Operations Supervisor, dated July 10, 1970 (81).

Employment application of Billy Larry Holliman (83).

Employment application of Dorris Gene Edmonds (84).

Personnel file of S. F. Riggan (89).

Application for employment of James T. Adamson, Jr. (91).

Grievance report of Thomas R. Johnson (92).

Notice from F. L. Medlin, President and Business Manager, Local 480, dated August 8, 1966 (93).

Employment application of Wallicia Q. Majors (95).

Table of organization, T.I.M.E. D.C., Inc., Atlanta, Georgia (98).

Seniority lists for Atlanta terminal (99).

Answer to questionnaire by Atlanta terminal to Lubbock general office with respect to employment of casuals (100).

Partial personnel file of Ernest H. Ferguson (101).

Partial personnel file of Fred Humphrey (102).

Partial personnel file of Howard L. Dennis (103).

Partial personnel file of Fred T. Miller (104).

Partial personnel file of Jesse L. Goodman (105).

Partial personnel file of Frank B. Lawrence, Jr. (106).

Partial personnel file of Leo V. Stamps (107).

Partial personnel file of Ira D. Robinette (108).

Partial personnel file of Frank W. Saunders (109).

Partial personnel file of James T. Ivey (110).

Employment application of Johnny Batchlor (111).

Employment application of John J. Calhoun (112).

Seniority lists for Chicago terminal, 1971 (113).

Answer to questionnaire by Chicago terminal to Lubbock general office with respect to employment of casuals (114).

Document with names of three minorities who have been road drivers at the Chicago terminal (115).

Partial personnel file of Thomas Childers (118).

Partial personnel file of Danny Capenigro (120).

Partial personnel file of John Alessi (121).

Partial personnel file of Daniel Fryar (122).

Organization chart, Oklahoma City terminal (123).

Organization chart, Oklahoma City shop (124).

Seniority lists, 1971, Oklahoma City terminal (125).

Answer to questionnaire by Oklahoma City terminal to Lubbock general office with respect to employment of casuals (126).

Payroll notice showing transfer of Wilford P. Gwin from city driver to road driver on 8-17-57 (127).

Partial personnel file of Marvin Fox (128).

Letter to J. W. Walter from James Johnson, Line Driver Supervisor, dated March 17, 1969 (129).

Partial personnel file of Kenneth Wayne Kelly (130).

Partial personnel file of Charles J. Collum (131).

Partial personnel file of Elmer G. Bennett (132).

Partial personnel file of Spencer R. Cline (133).

Partial personnel file of Claudia R. Alexander (134).

Employment application and traffic record of Willie Lee Henderson (136).

Employment application of J. W. Walter (138).

Trial trip report on J. W. Walter by Oscar Hardin, dated 9-26-68 (139).

Trial trip report on J. W. Walter by J. E. Westervelt, dated 10-11-68 (140).

Teletype message form from Don Capshaw to J. W. Walter, dated 2-3-69 (141).

Letter to J. W. Walter from James Johnson, Line Driver Supervisor, dated March 17, 1969 (142).

Partial personnel file of Charles E. Moreland (143).

Employment application of Roger W. Zink (144).

Organization chart, Dallas (Irving), Texas terminal (145).

Seniority rosters, (1971) Dallas (Irving) terminal (146).

Letter to Charles B. Taylor, Executive Director, Opportunities Industrialization Center, from Paul Siple, Terminal Manager, dated March 12, 1970 (147).

Answer to questionnaire by Dallas (Irving) terminal to Lubbock general office with respect to employment of casuals (148).

Report on casuals used, April-October, 1968 (149).

Partial personnel file of Kenneth D. Rickman (150).

Partial personnel file of Paul R. Brown (151).

Employment application of Ronnie E. Edwards (152).

Employment application of Raymond L. Castro (153).

Employment application of Mike Arriaga (154).

Employment application of Tereso J. Gonzales (155).

Employment application of Johnny G. Coronado (156).

Employment application of Vernon Lee Allen (157).

Employment application and withholding exemption of Walter J. Price (158).

Pay slips for Walter J. Price (159 (a) (b) (c) (d)).

Los Angeles Urban League referral card on Iris Darden (160).

Employment application of Iris G. Darden (161).

C.W.F.—2 Inventory of Iris G. Darden (162 (a)).

Wonderlic Personnel Test of Iris G. Darden (162 (b)).

Application for fidelity bond of Iris G. Darden (163 (a)).

Medical history questionnaire of Iris G. Darden (163 (b)).

Employees roster for San Antonio terminal, with seniority dates (164).

Answer to questionnaire by San Antonio terminal to Lubbock general office with respect to employment of casuals (165).

Letter to Bob Offer, Terminal Manager, from R. C. Shafer, President and Business Manager, Local 657, dated July 8, 1970 (166).

Employment application of Foster Barnes (167).

Employment application of Sanderson P. Walker (168).

Employment application of Guadalupe Martinez (169).

Charge of discrimination by Foster Barnes to EEOC (II).

Organization table—Memphis terminal (170).

Seniority lists (1971), Memphis terminal (171).

Answer to questionnaire by Memphis terminal to Lubbock general office with respect to employment of casuals (172).

Employee status notification sheet on Fred Williams (173).

Employee status notification sheet on David W. Chase (174).

Memorandum to Barton O'Brien from Jeryl Johnson, dated December 10, 1968 (175).

Bulletin to city employees at Memphis, dated July 7, 1969 (176).

Partial personnel file of John B. Poston (177).

Partial personnel file of Jessie L. Robertson (178).

Partial personnel file of Jack P. Jones (179).

Partial personnel file of Max D. Seeley (180).

List of transfers from city to road, Memphis (181).

Partial personnel file of John W. Stanford (182).

Employees transferred in and out of Memphis under modified seniority (183).

Bulletin to all city employees, dated March 25, 1969 (184).

Partial personnel file of Billy M. Wilbanks (185).

Partial personnel file of Charles W. Chesher (186).

Partial personnel file of Lawrence P. Chamberlin (187).

Partial personnel file of Benjamin G. Thompson (188).

Correspondence with and pertaining to minority referral sources by Memphis terminal (189).

Partial personnel file of Meredith Cannon (191).

Employment application (1969) of Arthur L. Thornton (192).

Resignation letter of Arthur L. Thornton, dated July 11, 1969 (193).

Certification of road test for James L. McNeal, dated 6-2-71 (194).

Employment application of Clayborn Momon (195).

Log book of W. G. Gately (198).

Pay stubs of W. G. Gately (198 (a) (b)).

Trip and pay sheet (2 pages) of W. G. Gately (199).

Log book of F. E. Yount, Jr. (200).

Log books of F. E. Yount, Jr. (200 (a) (b) (c)).

Teamsters Constitution, 1966 (201).

National Master Freight Agreement and Southern Conference Area Over-the-Road Supplemental Agreement (202).

. . . . . .

March 31, 1971 printout "Personnel List," with code key, furnished to plaintiff's attorneys by defendant T.I.M.E. DC, and showing by terminal—in job category—

Name
employee number
job code
status
birth date
employed date
lic. exp. date
phy. exm. date
rate (hr./sal)
sex
ethnic code
termination date

Printout "Earnings for City Drivers and Line Drivers 1969", furnished to plaintiff's attorneys by T.I.M.E. DC, on August 12, 1971.

1970 United States Census of Population Reports (Bureau of the Census, Department of Commerce, Washington, D.C.), showing population by race for the standard metropolitan statistical area and the city at T.I.M.E. DC's terminal locations.

A chart showing the percent of "white", "Negro" and "other" population in the standard metropolitan statistical area and the city at T.I.M.E. DC's terminal locations, and the "white", "Negro" and "other" work force at T.I.M.E. DC's terminals.

Persons of Spanish Surname (1963) (Bureau of the Census, Department of Commerce, Washington, D.C.), showing Spanish-surnamed population for the urban place (based on the 1960 census) at T.I.M.E. DC's terminal locations in the five southwestern states of Arizona, California, Colorado, New Mexico and Texas.

1960 United States Census of Population Reports (Bureau of the Census, Department of Commerce, Washington, D.C.), showing total population for the urban place at T.I.M.E. DC's

terminal locations in the five southwestern states of Arizona, California, Colorado, New Mexico and Texas.

A chart showing the percent of "Spanish-surnamed" population in the urban place at T.I.M.E. DC's terminal locations in the above five southwestern states, and the "Spanish-surnamed" work force at T.I.M.E. DC's terminals in these five states.

Chart, "T.I.M.E. DC, Inc.—Employees as of March 31, 1971, Racial Breakdown by Percentage in Job Categories."

Chart, "T.I.M.E. DC, Inc.—New Hires from July 2, 1965-March 31, 1971, Racial Breakdown by Percentage in Six Selected Job Categories."

Chart, "Percentage of Negroes Employed at T.I.M.E. DC Terminals Compared with Percentage of Negro Population of Terminal Cities."

Partial personnel file of James Earl Mince (presently a shop supervisor at the Nashville terminal).

Employment application of Herman J. Reichert (Denver, road driver).

Partial personnel file of Kenneth M. McAtee (Los Angeles, mechanic).

Partial personnel file of Norman Kaminski (Chicago, foreman).

Constitution of the International Association of Machinists and Aerospace Workers, effective April 1, 1967.

Letter to plaintiff's attorneys from V. L. Watkins, Terminal Manager, Montebello, California terminal, dated September 16, 1971, with attached seniority rosters for the terminal marked to show which predecessor company each employee came from.

Letter to plaintiff's attorneys from David R. Nagel, Personnel Manager, Vernon, California terminal, dated September 21, 1971, with attached seniority rosters for the terminal marked to show which predecessor company each employee came from.

Letter to plaintiff's attorneys from James W. Frazier, Terminal Manager, Hayward, California terminal, postmarked September 20, 1971, with attached line driver seniority roster for the terminal marked to show which predecessor company each employee on the roster came from.

Letter to plaintiff's attorneys from Vicente U. Columna, Contract Compliance Examiner, U. S. Postal Service, Chicago, Illinois, dated September 21, 1971, listing instances where minority referral sources were furnished to company officials, and listing minority newspapers in the Chicago area.

Letter to plaintiff's attorneys from Frances E. Gaston, Contract Compliance Examiner, United States Postal Service, Post Office Box 90865, Atlanta, Georgia, dated July 23, 1971, listing minority newspapers in Atlanta, Georgia.

Section 391, Motor Carrier Safety Regulations, Federal Highway Administration Department of Transportation.

All current collective bargaining agreements covering employees of T.I.M.E. DC, including the following:

> National Master Freight Agreement Covering Over-the-Road and Local Cartage Employees of Private, Common, Contract and Local Cartage Carriers for the Period of April 1, 1970 through June 30, 1973.
>
> Southern Conference Area Over-the-Road Motor Freight Supplemental Agreement Covering Drivers Employed by Private, Common and Contract Carriers for the Period of: April 1, 1970 to June 30, 1973 in the Territory of: Alabama, Florida, Georgia, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma and Texas.

Southern Conference Area Local Freight Forwarding Pickup and Delivery Supplemental Agreement Covering Employees of Private, Common, Contract and Local Cartage Carriers for the Period of April 1, 1970 to June 30, 1973 Covering the Operations in the Territory of: Arkansas, Louisiana, Oklahoma and Texas, Alabama, Florida, Georgia, Mississippi, Tennessee and the City of Asheville, North Carolina.

Southern Conference Area Local Freight Forwarding Garage Supplemental Agreement Covering Employees of Private, Common, Contract and Local Cartage Carriers for the Period of April 1, 1970 to June 30, 1973 Covering the Operations in the Territory of: Arkansas, Louisiana, Oklahoma and Texas, Alabama, Florida, Georgia, Mississippi, Tennessee, and the City of Asheville, North Carolina.

Southern Conference Area Local Freight Forwarding Office Clerical Employees Supplemental Agreement Covering Employees of Private, Common, Contract and Local Cartage Carriers for the Period of April 1, 1970 to June 30, 1973 Covering the Operations in the Territory of: Arkansas, Louisiana, Oklahoma and Texas, Alabama, Florida, Georgia, Mississippi, Tennessee, and the City of Asheville, North Carolina.

Western States Area Over-the-Road Motor Freight Supplemental Agreement Covering Drivers Employed by Private, Common and Contract Carriers for the Period of April 1, 1970 to June 30, 1973 . . .

Western States Area Pick-up and Delivery Local Cartage and Dock Workers Supplemental Agreement Covering Drivers Employed by Private, Common and Contract Carriers for the Period of April 1, 1970 to June 30, 1973 . . .

Western States Area Automotive Shop and Truck Servicing Supplemental Agreement for the Period of April 1, 1970 to June 30, 1973 . . .

Western States Area Office Employees Supplemental Agreement Covering Office Employees Employed by Private, Common and Contract Carriers for the Period of April 1, 1970 to June 30, 1973 . . .

Joint Council Number 7, Local Pickup and Delivery Supplemental Agreement for the Period of April 1, 1970 to June 30, 1973 (Local 70 of the Teamsters Union).

Western States Trucking Maintenance Agreement, International Association of Machinists and Aerospace Workers, AFL-CIO, May 1, 1971 to June 30, 1973.

Collective Bargaining Agreement by and between Office and Professional Employees International Union, Local Number 5, AFL-CIO, Denver, Colorado and Western Empire Operators Association for and on behalf of . . . T.I.M.E.-DC, Inc. . . . ., October 1, 1969 to October 1, 1972.

Central States Area Over-the-Road Motor Freight Supplemental Agreement Covering Drivers Employed by Private, common and contract Carriers for the Period of April 1, 1970 through June 30, 1973 . . .

Central States Area Local Cartage Supplemental Agreement Covering Employees of Private, Common, Contract and Local Cartage Carriers for the Period of April 1, 1970 through June 30, 1973 . . .

Joint Area Cartage Agreement of Local 705, I.B. of T. (International Brotherhood of Teamsters) . . . Effective Dates: April 1, 1970 to March 31, 1973 (Chicago).

Labor Contract and Working Agreement Covering Spotters, Working Foremen, Dock, Tractor Drivers, Checkers, Stackers, Truckers, Wheelers and Hostlers . . . Local

Union No. 710 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Period Covered: April 1, 1967 to and Including March 31, 1970 (Chicago) [the current agreement, if available, will be substituted].

Agreement Effective: May 1, 1970, through April 30, 1973 Covering Foremen, Mechanics, Helpers, Apprentices and All Other Employees Coming Under the Jurisdiction of Automobile Mechanics' Local No. 701, International Association of Machinists and Aerospace Workers, AFL-CIO, 133 South Ashland Boulevard, Chicago, Illinois 60607.

Local 705, I.B. of T. (International Brotherhood of Teamsters) Salesmen and/or Freight Solicitors Agreement, Effective: October 1, 1969-March 31, 1973 (Chicago).

Labor Contract and Working Agreement Covering Office and Miscellaneous Truck Terminal Employees . . . Local Union No. 710 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Period Covered: April 1, 1970 to and Including March 31, 1973 (Chicago).

Agreement . . . between Central Motor Freight Association, Inc., of Illinois and Motor Carrier Labor Advisory Council . . . and Service Employees' International Union, Local 189 (Chicago).

Central States Area Iron and Steel and Special Commodity Rider Covering Drivers Employed by Private, Common and Contract Carriers for the Period of April 1, 1970 through June 30, 1973.

Central Pennsylvania Over-the-Road and Local Cartage Supplemental Agreement for the Period: April 1, 1970 to June 30, 1973.

Contract, Inland Terminal Workers, Local 1730, I.L.A. (International Longshoremens' Association), with supplements.

Earnings per hour of T.I.M.E. D.C. employees at ten terminals as of March 31, 1971.

Earnings record comparison for city and line drivers at ten terminals of T.I.M.E. D.C. in 1969.

1970 or 1971 Seniority lists for the following T.I.M.E. D.C. terminals:

1. Cincinnati, Ohio
2. El Paso, Texas
3. Evansville Indiana
4. Phoenix, Arizona
5. Portland, Oregon
6. Seattle, Washington
7. St. Louis, Missouri
8. Vinita, Oklahoma (line drivers)
9. Winchester, Virginia

Partial Personnel files of T.I.M.E. D.C.'s Black and Spanish Surnamed American Supervisors and Salesmen as of March 31, 1971:

Partial personnel file of A. E. Razes (Chicago, Working Shop Foreman)

Partial personnel file of Willie Franklin (Denver, Line Driver Supervisor)

Partial personnel file of Ora Adair (Denver, Shop Foreman)

Partial personnel file of H. G. Ortiz (Los Angeles, Working Shop Foreman)

Partial personnel file of M. L. Garcia (Los Angeles, Line Driver Supervisor)

Partial personnel file of P. P. Garcia (Los Angeles, City Driver Supervisor)

Partial personnel file of F. Q. Reyes (Los Angeles, City Dispatcher)

Partial personnel file of R. O. Littlejohn (Los Angeles dock foreman)

Partial personnel file of H. Guzman (Los Angeles, traffic repr., salesman)

Partial personnel file of A. Lambert (New York City, driver supervisor)

Partial personnel file of P. M. Yepez (Sacramento, traffic repr., salesman)

Partial personnel file of C. B. Garcia (San Francisco, dock foreman)

Partial personnel file of George Lockett (San Francisco, dock foreman)

Partial personnel file of Albert M. Lamboy (San Francisco Asst. Terminal Manager)

Casual Employee List for Personnel as of week ending 52, 1970, furnished to plaintiff's attorneys by T.I.M.E. D.C. on November 9, 1971 (and 1970 job code key), and T.I.M.E. D.C., Inc., Alpha List of Cities with Identification Code Numbers (Rev. 8/12/71)

Casual Employee List for Eight T.I.M.E. D.C. Terminals, week ending 52, 1970, by Name, Employment Date, and Race and Job Codes (and Summaries of Casual Statistics by terminal):

Irving, Texas (Dallas)

Hayward, California (San Francisco)

Vernon, California (Lax)

Montebello, California (Los)

Denver, Colorado

Chicago, Illinois

Atlanta, Georgia

Memphis, Tennessee

Partial Personnel Files of the T.I.M.E. D.C. Dallas Road Drivers:

Partial personnel file of J. C. Dean, Jr. (Dallas, Texas road driver)

Partial personnel file of Leslie Clay Howell (Road Driver Dallas, Texas)

Partial personnel file of Gayle Norman Johnson (Road Driver Dallas, Texas)

Partial personnel file of Jack W. Pierce (Road Driver Dallas, Texas)

Partial personnel file of Howard P. Rathvon (Road driver Dallas, Texas)

Partial personnel file of Horace L. Richardson (Road driver Dallas, Texas)

Partial personnel file of Don C. Riffel (Road driver Dallas, Texas)

Partial personnel file of Jefferson W. Gallaher (Road driver Dallas, Texas)

Partial personnel file of J. W. Rushing (Road driver Dallas, Texas)

Partial personnel file of Anthony P. Sabella (Road driver Dallas, Texas)

Partial personnel file of Edward M. Sherley (Road driver Dallas, Texas)

Partial personnel file of William R. Bargy (Road driver Dallas, Texas)

Partial personnel file of Arthur E. Allbritton (Road driver Dallas, Texas)

Partial personnel file of James W. Bruce (Road driver Dallas, Texas)

Partial personnel file of Earnest E. Clark, Jr. (Road driver Dallas, Texas)

Partial personnel file of Charles Fink (Road driver Dallas, Texas)

Partial personnel file of Barney D. Wallace (Road driver Dallas, Texas)

Partial personnel file of Hulon Bangs (Dallas, Texas road driver)

Partial personnel file of Charles David McBride (Dallas, Texas road driver)

Partial personnel file of William S. Brittin (Dallas, Texas road driver)

Application of Harrell E. Holly for Road or City Driver Dallas, Texas

Partial personnel file of Roger Lee McCrimmon (Dallas, Texas city driver)

Partial personnel file of John Connell (Dallas, Texas city driver)

Partial personnel file of G. L. Simmons (City driver Dallas, Texas)

Partial personnel file of Prentis Lewis Walton, Jr. (City driver Dallas, Texas)

Employment application of Ophers Barber (City driver Dallas, Texas)

Partial personnel file of Charles E. Lewis (City driver Dallas, Texas)

Partial personnel file of Herman L. Brown (City driver Dallas, Texas)

2. **Witnesses**

Cathrine McGinn
Research Analyst
Civil Rights Division
Department of Justice
Washington, D.C.

G. J. Henry
Director of Labor Relations and Personnel
T.I.M.E. D.C., Inc.
Lubbock, Texas

C. F. Hutchinson, Personnel Manager
T.I.M.E. D.C., Inc.
Lubbock, Texas

Richard H. Stinson
1927 82nd Avenue
Oakland, California

Thomas William White
2009 North Central
Los Angeles, California

James Edward Neely
2313 Virginia Road
Los Angeles, California

Grady A. Amos
2401 Main Street, Northwest
Atlanta, Georgia

Walter Jean Price
2921 South Blvd, Apt. 204
Dallas, Texas

Iris G. Hicks
2329 Annabelle Lane
Forth Worth, Texas

Ophers Barber
1919 Dudley
Dallas, Texas

Michael Arriaga
2236 Anson Road
Dallas, Texas

Fred Williams, Jr.
2886 Mimosa
Memphis, Tennessee

Arthur Leon Thorton
332 West Essex
Memphis, Tennessee

Frances E. Gaston
Contract Compliance Examiner
United States Postal Service
Post Office Box 90865
Atlanta, Georgia

Vincente U. Columna
Contract Compliance Examiner
United States Postal Service
Regional Office
Chicago, Illinois

Erskine Lytle, Jr.
Contract Compliance Examiner
United States Post Service
Nashville, Tennessee

Harrell Holly
705 Penguin Drive
Dallas, Texas

Roger Lee McCrimmon
2133 E. Ledbetter, Apt. 1099
Dallas, Texas

3. **Designated Portions of Depositions and Interrogatories.**

(a) **Depositions.**

(From depositions taken in San Francisco, California)

Deposition of:	**Pages for Evidence** (if only specific lines of pages are to be used, they are in parenthesis)
Albert M. Lamboy	3-5 (1-24), 17 (16-25) -25 (1-17)
George Larson	3-6 (1-19) 8 (22-25) -10 (1-15) 11 (19-25) -14 (1-17)
Ed Elsner	3-7 (1-21)
Bennie Whitfield	3-18
George W. Sullivan	3-18 (1) 23 (2-25) -24 (1-19)
Edward Titus	3-6 (1-23)
Otis Zeno	3-7 (1-12) 23 (23-25) -34 (1-23)
Rueben A. Garcia	3-9 (1-19) 23 (15-25) -24 (1-12)
Roy M. Angelo	3-6, 21 (16-25) -22 (1-11) 23 (16-25) -26 (1-20) 34 (9-25) -42 (1-22) 45 (19-25) -46 (1-13)
Carlton King	3-7 (1-5), 14 (19-23)

(From depositions taken in Denver, Colorado)

Roy M. Wilson	1-59 (1-22), 62 (5-25) -71, 76 (5-25) -77 (1-19), 83 (4-25) -84 (1-22)
Roy M. Wilson (cont'd)	1-8
William E. Franzen	1-29
Veris Simms	1-14
Lenard Harrison	1-19
Feliberto Trujillo	1-13
Earmitt Ceophalas Jones	1-17
Jeroem Pastwick	1-17

(From depositions taken in Los Angeles, California)

David R. Nagel	1-67
Ned M. Rockwell	1-12 (1-24), 19 (10-21), 26 (7-25) -49 (1-7), 52 (1-18), 58 (5-25) -62
Anthony W. Lillywhite	1-50
Gene Shepherd	1-7 (1-17), 21-24
John Le Flore	1-6 (1-5), 8 (12-25) -9 (1-12)
James Elroy Butler	1-15 (1-6), 38 (7-25) -40 (1-3)
John T. Williams	1-12

Lyle West	1-9 (1-3), 9 (17-25) -10 (1), 10 (24-25) -14 (1-6), 14 (20-25) -17 (1-24), 19 (23-25) -20 (1-10)
*Thomas William White	1-28
Edgar Cornelius Rudison	1-13
Roy F. Patton	1-11 (1-23), 12 (16-25) -20 (1-9), 22-28
Elmer L. Banuelos	1-21
William Thomas Simpson, Jr.	1-14
Virgil A. Hardin	1-10 (1-6), 20 (13-25) -23
Jose de Ramirez Almaraz	1-33
*James Edward Neely	1-17
John Passi	1-12
David E. O'Neal	1-24 (1-9)
James Alexander Floyd	1-21
George Taylor	1-33
Marvin Richard Vestal	1-33
John B. Alley	1-19

(From depositions taken in Nashville, Tennessee)

Kenneth Neil Gibbs, Jr.	1-50 (1-11), 56 (21-25) -59 (1-10) 62 (25) -66 (1-17), 70 (16-25) -74 (1-16), 77 (10-25) -80 (1-7), 90 (6-25) -95 (1-13)

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* If can appear as a witness, deposition will not be offered.

Dallas Ray Anderson	111-142 (1-20), 155 (6-25) -157 (1-2)
Lillard Jasper Hampton	159-161 (1-20), 163-165 (1-9)
James Tilford Adamson, Jr.	167-174
James Garland Lail	175-181
James Earl Mince	182-189 (1-20)
Lee Francis Jones	195-199 (1-14), 201 (3-25) -202 (1-9), 208 (4-25) -209 (1-11), 209 (19-25) -210 (1-13)
Thomas Richard Johnson	215-222 (1-15), 222 (20-25) -227 (1-11), 227 (23-25) -234 (1-5)
Miller Joe Crutchfield	235 (1-18), 237 (17-25) -244 (1-3)
Henry L. Davis	246-254 (1-3), 258-262 (1-11)
Luther Alvin Watson	264-285 (1-21), 287 (3-17), 289 (7-25) -293 (1)
Raymond Leslie Rucker	296-309
Wallicia Quovadis Majors	318-327
Homer W. Burns	335-361
Levi Gant	381-390
William Edward Dobbin	391-397
James A. Keeling	398-404 (1-13)
James Wallace, Jr.	407-416

Kenneth Neil Gibbs, Jr. (II)	431 (25), 432 (16-25) -434 (1-18)
Dallas Ray Anderson (II)	448 (3-25) -454 (1-2)

(From depositions taken in Atlanta, Georgia)

C. W. Allison	1-52 (1-20), 59-82 (1-17), 86 (20-25) -87 (1-10), 117 (15-25) -119 (1-12), 121-123 (1-21), 132 (18-25) -133 (1-18), 135 (17-25) -138 (1-17), 142-143 (1-5)
Roy D. Gibson	1-17 (1-24), 22-28
*Grady A. Amos	1-37 (1-12)
Joe Amos	1-12 (1-10), 12 (20-25) -16 (1-17)
John Batchelor	1-11 (1-24)
Theodus Perry	1-19
John J. Calhoun	1-23 (1-21)

(From depositions taken in Chicago, Illinois)

Ronald J. Drobny	1-99
Robert V. Wolf	1-13 (1-14), 15 (2-25) -19 (1-16), 34-53
Cleo Travis Harris	1-6 (1-10)

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* If can appear as a witness, deposition will not be offered.

John L. Garrett	1-3
Daniel J. Fryer	1-26
David Conner	1-13

(From depositions taken in Oklahoma City, Oklahoma)

D. N. Champlin	1-58 (1-6), 77 (8-25) -94 (1-21), 111-116 (1-14), 126 (7-25) -129 (1-4)
J. W. Walter	239-268 (1-20)
Don Capshaw	289 (23-25) -308

(From depositions taken in Dallas, Texas)

Robert Carlee Cathey	1-76 (1-19), 93-96 (1-18)
*Walter Jean Price	1-25 (1-17)
*Mrs. Iris G. Darden Hix (sic)	1-14 (1-13)
Murray W. Miller	1-27

(From depositions taken in San Antonio, Texas)

Robert M. Mitchell	1-22, 29 (21-25) -32 (1), 33 (1-19), 41 (15-25) -47 (1-22)
Foster Barnes	1-28 (1-24), 78-79 (1-12), 92 (11-25)
S. P. Walker	1-12 (1-15)
Guadalupe Martinez	1-13 (1-17)

* If can appear as a witness, deposition will not be offered.

(From depositions taken in Memphis, Tennessee)

Don Allen	1-18
*Arthur Leon Thornton	1-30 (1-15), 43 (12-24)
James Leon McNeal	1-23 (1-14)
*Fred Williams, Jr.	1-14
Clayborn Moman	1-21
David Warren Chase	1-18 (1-17), 20 (20-24) -26
James H. Walker	1-32
W. G. Gately	1-30
Fontaine Ernest Yount, Jr.	1-35
Charles Edwin Taylor	1-12
Robert T. Jones, Sr.	1-6 (1-20)
Robert N. Houston	1-2 (1-22), 10 (10-24) -24 (1-3)

(b) **Interrogatories**

The following interrogatories propounded by plaintiff to the defendant T.I.M.E. D.C., Inc. on March 29, 1971, and the answers thereto provided by the defendant company on May 25, 1971: Numbers 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 21, 22, 23, 24.

* If can appear as a witness, deposition will not be offered.

6. **Exhibits, Witnesses and Designated Portions of Depositions and Interrogatories to Be Used as Evidence by Each Party**

A. **Plaintiff** (See Attached)

B. **Defendant T.I.M.E.-DC, Inc.**

1. **Exhibits**

(Defendants' exhibits A through NN were marked for identification in conjunction with depositions taken in this case, and defendants' exhibits OO and PP were received at the oral hearing before the Court on the motion of defendants to dismiss. Exhibits QQ through SSS will be introduced at the trial in Lubbock, Texas.)

A Letter from Roy M. Wilson to Clarence Akes, Denver, Colorado inter-office correspondence of DC International, Inc. Subject: Lenard W. Harrison, dated April 16, 1968.

B Inter-office correspondence from C. W. Akes, Driver Supervisor, DC International, Inc., to L. E. Eichinger, Denver, Colorado, May 14, 1968. Subject: Lenard Harrison.

C Colorado Civil Rights Commission complaint of Earmitt Jones dated September 9, 1970.

D Letter from Colorado Civil Rights Commission dated May 12, 1969 to Mr. Jerome J. Pastwick.

E Inter-office memo from Clarence Guhl of T.I.M.E. Freight, Inc. to all division and department heads regarding equal employment opportunity, dated August 16, 1966, and statement of Loyd Lanotte, President, of company policy as to equal employment opportunity.

F Partial personnel record of George Taylor, Jr.

G Partial personnel record of George Taylor, Jr.

H Memorandum from Howard Reedy, Manager of Personnel and Training, DC International, Inc., to all terminal managers, dated March 14, 1967.

I Memorandum from Howard Reedy, Manager of Personnel and Training, DC International, Inc., to all terminal managers, dated June 28, 1968.

J Inter-office communication from O. M. Hendrickson, Presider Los Angeles-Seattle Motor Express, to all terminal managers, department managers and supervisors, dated April 24, 1967.

K Inter-office communication from Clarence Guhl, dated June 27, 1969, to all terminal managers, etc., containing statement of employment policy.

L Inter-office memo from Jeryl Johnson, Personnel Manager, T.I.M.E.-DC, Inc., to Vic Watkins, Terminal Manager, LOS terminal, Los Angeles, California, dated April 3, 1970, containing statement of T.I.M.E.-DC, Inc. employment policy and list of minority referral sources in Los Angeles.

M Accident record of Edgar C. Rudison, Los Angeles employee.

N Accident record of Elmer L. Banuelos, Los Angeles employee.

O Los Angeles-Seattle Motor Express, Inc. application for employment of Virgil Antonio Hardin, dated September 25, 1968.

P Warning notice to David O'Neal, Denver Chicago Trucking Co., Inc. employee, Los Angeles, California, dated October 23, 1964.

Q Warning notice to David O'Neal dated October 26, 1964.

R Letter to David O'Neal from DC International, Inc. Assistant Terminal Manager Ray C. Cloward, Los Angeles, California, dated October 17, 1966.

S Denver Chicago Trucking Company, Inc. employment application of David Ervin O'Neal, dated July . . , ...

T Accident record of James Alexander Floyd, Los Angeles employee.

U Employee vehicular accident history of James A. Floyd, dated January 4, 1966 and attached accident report.

V 14-page exhibit regarding T.I.M.E-DC's Nashville, Tennessee terminal and response to Item No. 12 to attachment to notice of depositions regarding the use made of minority employment sources by said terminal.

W Inter-office memorandum dated February 10, 1971 from Joe Crutchfield—Nashville, to Chuck Hutchinson, Lubbock General Office of T.I.M.E.-DC, Inc.

X 2-page document containing responses to Item 2 of attachment to notice of depositions regarding Nashville terminal and policies, procedures and standards, including testing, utilized by the corporation and its predecessor corporations for original hire and for transfer or promotion as to all jobs within the terminal.

Y 2-page document showing correspondence between Nashville shop superintendent and Nashville Auto-Diesel College, minority referral source, in April and May, 1967.

Z 2-page document showing correspondence between T.I.M.E.-DC shop superintendent at Nashville, Tennessee and Erskine W. Lytle, Jr., Contract Compliance Examiner, United States Post Office, Nashville, Tennessee, in February, 1968.

AA 1-page letter from K. Neil Gibbs, Terminal Manager, Nashville, Tennessee to Hershel Bond, Teamster Business Agent, Nashville, Tennessee.

BB Inter-office memo from E. C. Yost, T.I.M.E.-DC, Nashville, Tennessee, regarding employee Leonard Gibbs.

CC Letter from Frances E. Gaston, Contract Compliance Examiner, Atlanta, Georgia, to Jeryl Johnson, Personnel Director, T.I.M.E. Freight, Inc., Lubbock, Texas, dated June 2, 1970, with attachment.

DD Resignation notice of Jesse Goodman, Atlanta, Georgia, August 5, 1958.

EE Copy of letter from R. D. Gibson, Office Manager, T.I.M.E.-DC, Inc., Atlanta, Georgia, dated March 28, 1969 to Erskine Hawkins, Director of minority referral agency, ACEP-Project Ready, Atlanta, Georgia.

FF March 28, 1969 letter (copy) from R. D. Gibson, Office Manager, T.I.M.E.-DC, Inc., Atlanta, Georgia to minority referral agency, Clark College, Atlanta, Georgia, and similar letters to Morehouse College, Atlanta, Georgia, Atlanta University Center, Atlanta, Georgia, Atlanta School of Business, Atlanta, Georgia, Blayton Business College, Atlanta, Georgia, Extra Help, Inc., Atlanta, Georgia, ACEP-Project Ready, Atlanta, Georgia.

GG March 25, 1969 letter from C. W. Allison, Terminal Manager, to minority referral agency, The Atlanta Urban League, Inc., Atlanta, Georgia, and similar letters to Clark College, Atlanta, Georgia, Morehouse College, Atlanta, Georgia, Atlanta University Center, Atlanta, Georgia, Atlanta, Office of NAACP, Atlanta, Georgia, Atlanta School of Business, Atlanta, Georgia, Blayton

Business College, Atlanta, Georgia, Extra Help, Inc., Atlanta, Georgia, ACEP-Project Ready, Atlanta, Georgia.

HH Copy of article from **The Dallas Morning News,** Dallas, Texas, June 30, 1971, entitled "Group Said Unidentifiable" (Estes on Mexican-Americans).

II EEOC discrimination charge of Foster Barnes, San Antonio, Texas, dated July 6, 1970.

JJ Letter from Foster Barnes to Frank Rivas, Contract Compliance Officer, Post Office Department, San Antonio, Texas, dated August 11, 1970.

KK Letter and grievance report regarding Guadalupe Martinez, San Antonio, Texas employee, dated May 9, 1969.

LL Omit

MM Denver Chicago Trucking Company, Inc. application for employment of John B. Alley, Los Angeles, California employee.

NN T.I.M.E.-DC, Inc. inter-office memo listing names of individuals and experience with other companies, including Tooley, R., Spooner, D., etc.

OO United States map showing regular routes operated by T.I.M.E.-DC, Inc. in 1971, including identification of location of terminals and relay stations (identified in conjunction with motion to dismiss).

PP United States map showing T.I.M.E.-DC, Inc. terminals, sales offices and port gateways for international trade, as of 1971 (introduced in conjunction with motion to dismiss).

QQ History of Mergers Leading to Formation of T.I.M.E.-DC, Inc. in January, 1969 and Illustration of Terminal Duplications.

RR Series of Maps to Pictorially and Sequentially Show the History of Company Mergers Leading to the Formation of T.I.M.E.-DC, Inc.

SS Variances Between Various Labor Agreements to Which T.I.M.E.-DC is a Party Regarding Selected Contract Provisions.

TT Percentage and Absolute Increase (Decrease) in Total Employment and Minority Group Employment—T.I.M.E.-DC, Inc.—1967 through 1972.

UU Percentage and Absolute Increase (Decrease) in Total and Minority Group Employment—Ten Selected Terminal Locations where Depositions have been taken by Plaintiff in the Present Proceeding—T.I.M.E.-DC, Inc.—1967 through 1972.

VV Minorities as a Percentage of Total Employees as of December 31, 1971 System-Wide and for the Three Major Regional Areas by Job Category.

WW Minorities as a Percentage of New Employees hired in 1971 System-Wide and for the Three Major Regional Areas by Job Category.

XX Minorities as a Percentage of Total Employees used on a Casual Basis in 1971—System-Wide and for the Three Major Regional Areas by Job Category.

YY Minorities as a Percentage of Total Employees used on a Casual Basis in 1971 at Ten Selected Terminals where Depositions have been taken by Plaintiff in the Present Proceeding and the General Office by Job Category.

ZZ Line Driver Seniority Lists of Selected Terminals to Show Employees who came to Terminals as a Result of Change of Operations.

AAA Compilation of Selected Correspondence Involving T.I.M.E.-DC, Inc. And/Or its Predecessors' Personnel

and Federal Civil Rights Agencies and Minority Referral Sources.

BBB Charts and Graphs of Professor George Regarding Minority Groups Based on Demographic, Socio-Economic and T.I.M.E.-DC Employment Factors.

CCC Folio—Employment Patterns—All Minority Groups as a Percentage of Total Work Force at T.I.M.E.-DC, Inc.—1967 through 1972.

DDD Folio—Employment Patterns—Minorities as a Percentage of Total Work Force—Five Southwestern States—1967 through 1972.

EEE Folio—Employment Patterns—Persons of Spanish Surname in the Five Southwestern States as of December 31, 1971.

FFF Folio—Employment Patterns—Minorities as a Percentage of Total Work Force—Arizona, California, Colorado, Texas—1967 through 1972.

GGG B.L.S. Report No. 394 (Departments of Commerce & Labor) The Social and Economic Status of Negroes in the United States, 1970, pp. 6-7.

HHH U. S. Dept. of Labor, Bulletin No. 1511, June, 1966, "The Negroes in the United States," p. 43, and 1968 Annual Report, United States Civil Service Commission, "Challenge and Change," p. 77.

III Table 1-13, Dept. of Justice (June, 1965 and November, 1967), U. S. Civil Service Commission, "Study of Minority Group Employment in the Federal Government 1967," p. 15.

JJJ List of Personnel and Labor officers of T.I.M.E.-DC, Inc. and predecessors.

KKK Effective Earnings per hour of T.I.M.E.-DC, Inc. Employees at Four Terminals as of 3-13-71.

LLL Memphis Line Haul Accident Summary.

MMM 1971 Earnings of All Driver Employees at Selected Terminals.

NNN Relationship Between Safety Record and Over-the-Road Experience Prior to Employment.

OOO Letter dated April 26, 1971 addressed to Mr. Jim Frazier, Terminal Manager, Hayward, California terminal of T.I.M.E.-DC, Inc. from Richard H. Stinson.

PPP 1971 Earnings of All Driver Employees at Selected Terminals except those under $3,000.

2. **Witnesses**

(a) Roy M. Wilkins, President, T.I.M.E.-DC, Inc., Lubbock, Texas.

(b) G. J. Henry, Director of Labor Relations and Personnel, T.I.M.E.-DC, Inc., Lubbock, Texas.

(c) C. F. Hutchinson, Personnel Manager, T.I.M.E.-DC, Inc., Lubbock, Texas.

(d) Tobey Beck, T.I.M.E.-DC, Inc., Los Angeles, California.

(e) David R. Nagel, Personnel Manager, T.I.M.E.-DC, Inc., Los Angeles, California.

(f) Ned M. Rockwell, Line Driver Supervisor, T.I.M.E.-DC, Inc., Los Angeles, California.

(g) Verne L. Powell, Superintendent of Shop Maintenance, T.I.M.E.-DC, Inc., Los Angeles, California.

(h) Jack Starr, Assistant Terminal Manager, T.I.M.E.-DC, Inc., Los Angeles, California.

(i) Victor Watkins, T.I.M.E.-DC, Inc., Los Angeles, California.

(j) Anthony M. Lillywhite, Driver Supervisor, T.I.M.E.-DC, Inc., Los Angeles, California.

(k) C. W. Allison, Terminal Manager, T.I.M.E.-DC, Inc., Atlanta, Georgia.

(l) Jackson Bruce Stroud, Operations Manager, T.I.M.E.-DC, Inc., Atlanta, Georgia.

(m) Roy Walker, T.I.M.E.-DC, Inc., Dallas, Texas.

(n) Bob Dickins, T.I.M.E.-DC, Inc., Dallas, Texas.

(o) Robert Cathey, Terminal Manager, Dallas, Texas.

(p) Bart Barton O'Brien, Terminal Manager, T.I.M.E.-DC, Inc., Memphis, Tennessee.

(q) Neil Gibbs, Terminal Manager, T.I.M.E.-DC, Inc., Nashville, Tennessee.

(r) Dallas Ray Anderson, Regional Maintenance Manager, T.I.M.E.-DC, Inc., Nashville, Tennessee.

(s) Ron Drobney, Assistant Terminal Manager, T.I.M.E.-DC, Inc., Chicago, Illinois.

(t) Mary Castrale, T.I.M.E.-DC, Inc., Chicago, Illinois.

(u) Professor Clay George, Texas Tech University, Lubbock, Texas.

(v) Steven Sydbottom, Director of Claims and Safety, T.I.M.E.-DC, Inc., Lubbock, Texas.

(w) Dennis Anderson, Director of Transportation, T.I.M.E.-DC, Inc., Lubbock, Texas.

3. **Designated Portions of Depositions and Interrogatories**

(a) **Depositions**

Defendant T.I.M.E.-DC has previously submitted additional designated portions of depositions it wishes to rely on

under date of March 31, 1972, as well as agreeing to admission of certain summaries of depositions.

(b) **Interrogatories**

Defendant T.I.M.E.-DC wishes to designate the additional interrogatories propounded by Plaintiff to said Defendant on March 29, 1971 and the answers thereto provided by the Defendant company on May 25, 1971 as to numbers 9, 16, 18, 19, 20.

Matheson, Bieneman, Veale & Parr
Attorneys at Law
Suite 1700 - One Woodward Avenue
Detroit, Michigan 48226
Area Code 313-962-8920

March 31, 1972

Honorable Halbert O. Woodward
United States District Judge
United States District Court
Northern District of Texas
Post Office Box 2838
Lubbock, Texas 79408

Re: United States v. T.I.M.E.-DC, Inc., et al., United States District Court for the Northern District of Texas (Lubbock Division), Civil Actions Nos. 5-868 and 5-897.

Dear Judge Woodward:

Attached please find designated portions of depositions which Defendant T.I.M.E.-DC, Inc. plans to introduce at trial in the above actions. As indicated by Mr. Fenton in his letter of March

28, 1972, T.I.M.E.-DC is in agreement with Plaintiff that the summaries of 19 other depositions may be submitted in lieu of the depositions themselves; and that the summaries will be filed at the same time as the proposed pre-trial order.

Very truly yours,

MATHESON, BIENEMAN, VEALE
& PARR
/s/ ROBERT D. SCHULER

RDS:cm

Enclosures

cc: Messrs.
L. N. D. Wells, Jr.
William B. Fenton
C. F. Hutchinson
R. Ian Hunter

Additional Designated Portions of Depositions for Defendant T.I.M.E.-DC, Inc.

(From depositions taken in San Francisco, California)

Deposition of:	**T.I.M.E.-DC, Inc.'s Additional Depositions**
Albert M. Lamboy	32 (15-25) -40 (1-8), 44 (2-25) -54 (1-11)
George Larson	6 (20-25) -8 (1-21), 16 (7-25) -19 (1-11)
Ed Elsner	10 (20-25) -14 (6)
Bennie Whitfield	None
George W. Sullivan	24 (21-25) -31 (1-13)
Edward Titus	None

Deposition of:	**T.I.M.E.-DC, Inc.'s Additional Depositions**
Otis Zeno	14 (17-25) -21 (1-22), 40 (5-25) -62 (1-2)
Reuben A. Garcia	24 (15-25)
Roy M. Angelo	32 (2-25) -33 (1-12) 49 (22-25) -51 (1-18)
Carlton King	None

(From depositions taken in Denver, Colorado)

Roy M. Wilson	None
Roy M. Wilson (cont'd)	None
William E. Franzen	None
Veris Simms	None
Lenard Harrison	None
Feliberto Trujillo	None

(From depositions taken in Los Angeles, California)

David R. Nagel	All Cross-examination
Ned M. Rockwell	Entire Deposition
Anthony W. Lillywhite	All Cross-examination
Gene Shepherd	None
John Le Flore	23-30, 35-36
James Elroy Butler	45-49, 52-57
John T. Williams	None
Lyle West	All of Deposition
Thomas William White	All Cross-examination
Edgar Cornelius Rudison	All Cross-examination
Roy F. Patton	1-29
Elmer L. Banuelos	All Cross-examination

Deposition of:	T.I.M.E.-DC, Inc.'s Additional Depositions
William Thomas Simpson, Jr.	All Cross-examination
Virgil A. Hardin	10-20
Jose de Ramirez Almaraz	All Cross-examination
James Edward Neely	All Cross-examination
John Passi	All Cross-examination
David E. O'Neal	24-30
James Alexander Floyd	All Cross-examination
George Taylor	All Cross-examination
Marvin Richard Vestal	All Cross-examination
John B. Alley	All Cross-examination

(From Additional Depositions taken in Los Angeles, California)

David R. Nagel	1-22
Ned M. Rockwell	1-10
Verne L. Powell	1-22
Anthony W. Lillywhite	1-13
Jack Starr	1-21

(From depositions taken in Nashville, Tennessee)

Kenneth Neil Gibbs, Jr.	59 (11-25) -62 (1-25) All Cross-examination of R. D. Schuler 95-108 328-334
Dallas Ray Anderson	All Cross-examination of R. D. Schuler 145-152 157-158

Deposition of:	T.I.M.E.-DC, Inc.'s Additional Depositions
Lillard Jasper Hampton	162 (23-25) All Cross-examination of R. D. Schuler 163-164, 165 (12-22)
James Tilford Adamson, Jr.	None
James Garland Lail	None
James Earl Mince	189 (21-25) -193 (1-7) All Cross-examination of R. D. Schuler 193
Lee Francis Jones	202 (10-25) -203 (1-8) 206 (2-25) -208 (1-4)
Thomas Richard Johnson	None
Miller Joe Crutchfield	235 (19-25) -237 (1-16) 244 (7-15)
Henry L. Davis	None
Luther Alvin Watson	None
Raymond Leslie Rucker	None
Wallicia Quovadis Majors	None
Homer W. Burns	None
Levi Gant	None
William Edward Dobbin	None
James A. Keeling	405 (4-16)
James Wallace, Jr.	None
Kenneth Neil Gibbs, Jr. (II)	427-431 433 (19-25) -434 (1-18) 435 (3-25) -436 (1-22)
Dallas Ray Anderson (II)	438-447

(From depositions taken in Atlanta, Georgia)

Deposition of:	T.I.M.E. D.C., Inc.'s Additional Depositions
C. W. Allison	82 (18-25) -86 (1-19) 87 (12-25) -106 (1-16) 119 (13-25) -120 123 (22-25) -126 (1-16) 128-132 (1-17) 133 (20-25) -135 (1-16) 138 (18-25) -141 (1-25)
Roy D. Gibson	17 (24-25) -22 (1-4)
Grady A. Amos	None
Joe Amos	15 (16-25) -24 (1-20)
Theodus Perry	None
John J. Calhoun	None

(From depositions taken in Chicago, Illinois)

Ronald J. Drobny	None
Robert V. Wolf	Entire Deposition (1-64)
Cleo Travis Harris	All Cross-examination of R. D. Schuler (1-8)
John L. Garett	4-5, 15 (18-25) -17 (1-25)
Daniel J. Fryer	None
David Conner	None
Mary J. Castrale	1-26

(From depositions taken in Oklahoma City, Oklahoma)

Deposition of:	T.I.M.E. D.C., Inc.'s Additional Depositions
D. N. Champlin	Entire Deposition
J. W. Walter	269, 280-285, 287-288
Don Capshaw	Entire Deposition

(From depositions taken in Dallas, Texas)

Robert Carlee Cathey	Cross-examination of R. D. Schuler (76-89)
Walter Jean Price	Cross-examination of R. D. Schuler (25-38, 43-46)
Mrs. Iris G. Darden Hix (sic)	Cross-examination of R. D. Schuler (14-17)
Murray W. Miller	None
Robert Dickens	1-37

(From depositions taken in San Antonio, Texas)

Robert M. Mitchell	Entire Deposition
Foster Barnes	Entire Deposition
S. P. Walker	12-14
Guadalupe Martinez	13-16

Matheson, Bieneman, Veale & Parr
Attorneys at Law
Suite 1700 . . One Woodward Avenue
Detroit, Michigan 48226
Area Code 313-962-8920

April 3, 1972

Honorable Halbert O. Woodward
United States District Judge
United States District Court
P.O. Box 2838
Lubbock, Texas 79408

Re: United States v. T.I.M.E.-DC, Inc., et al., United States District Court for the Northern District of Texas (Lubbock Division), Civil Action Nos. 5-868 and 5-897

Dear Judge Woodward:

On March 31, 1972, we forwarded a list of additional designated portions of depositions that defendant T.I.M.E.-DC, Inc. plans to introduce at trial in the above actions. The undersigned did not have an opportunity to proofread the attachment prior to the mailing on March 31. There are several corrections that should be made; on each page the right-hand column should be titled "T.I.M.E.-DC, Inc.'s Additional Designations" instead of "T.I.M.E.-DC, Inc.'s Additional Depositions."

On the first page of the attachment we failed to list the names of Denver deponents Earmitt Jones and Jerome Pastwick. Their names should have appeared and the word "none" should have appeared after each of their names.

On page 5, the reference to depositions taken in Memphis, Tennessee was omitted. A substitute page 5 is here enclosed.

Very truly yours

MATHESON, BIENEMAN, VEALE & PARR
/s/ ROBERT D. SCHULER

RDS/bel

Enclosure

cc: Messrs. Wells, Fenton, Hutchinson and Hunter

(From depositions taken in Dallas, Texas)

Deposition of:	**T.I.M.E.-DC, Inc.'s Additional Designations**
Robert Carlee Cathey	Cross-examination of R. D. Schuler (76-89)
Walter Jean Price	Cross-examination of R. D. Schuler (25-38, 43-46)
Mrs. Iris G. Darden Hix (sic)	Cross-examination of R. D. Schuler (14-17)
Murray W. Miller	None
Robert Dickens	1-37

(From depositions taken in San Antonio, Texas)

Robert M. Mitchell	Entire Deposition
Foster Barnes	Entire Deposition
S. P. Walker	12-14
Guadalupe Martinez	13-16

(From depositions taken in Memphis, Tennessee)

Deposition of:	T.I.M.E.-DC, Inc.'s Additional Designations
Don Allen	None
Arthur Leon Thornton	Entire Deposition
James Leon McNeal	None
Fred Williams, Jr.	None
Clayborn Moman	None
David Warren Chase	None
James H. Walker	None
W. G. Gately	None
Fontaine Ernest Yount, Jr.	None
Robert T. Jones, Sr.	6(23-24), 8(1-4)
Robert N. Houston	2-10

C. **Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, International Association of Machinists and Aerospace Workers, AFL-CIO, and Local 480 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.**

2. **Witnesses**

Murray W. Miller, Dallas, Texas, or some other elected official of the International Brotherhood of Teamsters.

Ralph Dixon, or some other elected representative of the Southern Conference of Teamsters.

A representative of the Western Conference of Teamsters.

A representative of the Central Conference of Teamsters.

A representative of the Eastern Conference of Teamsters.

A representative of the Teamsters T.O.P. program in Los Angeles, California.

3. **Designated Portions of Depositions and Interrogatories**

(a) **Depositions**

Relevant cross-examination by Union counsel of each witness listed by plaintiff and defendant T.I.M.E. D.C.

(b) **Interrogatories**

Interrogatories of International Brotherhood of Teamsters and International Association of Machinists to plaintiff served on September 7, 1971, plaintiff's answers to these interrogatories, served on October 5, 1971, and plaintiff's supplemental answers to these interrogatories, served on January 12, 1972.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

(Title Omitted in Printing)

Nos. CA. 5-868 and CA. 5-897 (Consolidated)

Certificate to Proposed Pre-Trial Order

The attorneys for the parties state that they have conferred with each other on the matters included in the foregoing proposed Pre-Trial Order, that the stipulations therein are agreed

upon by the parties, and that the proposed Pre-Trial Order is submitted to the Court for entry. The estimated probable length of trial is two and one-half weeks.

WILLIAM B. FENTON
JOEL G. CONTRERAS
Attorneys
Department of Justice
Washington, D. C. 20530
Attorneys for Plaintiff

ROBERT D. SCHULER, R. IAN HUNTER, Esquires
MATHESON, BIENEMAN, VEALE & PARR
Suite 1700
One Woodward Avenue
Detroit, Michigan 48226
Attorneys for Defendant
T.I.M.E. D.C., Inc.

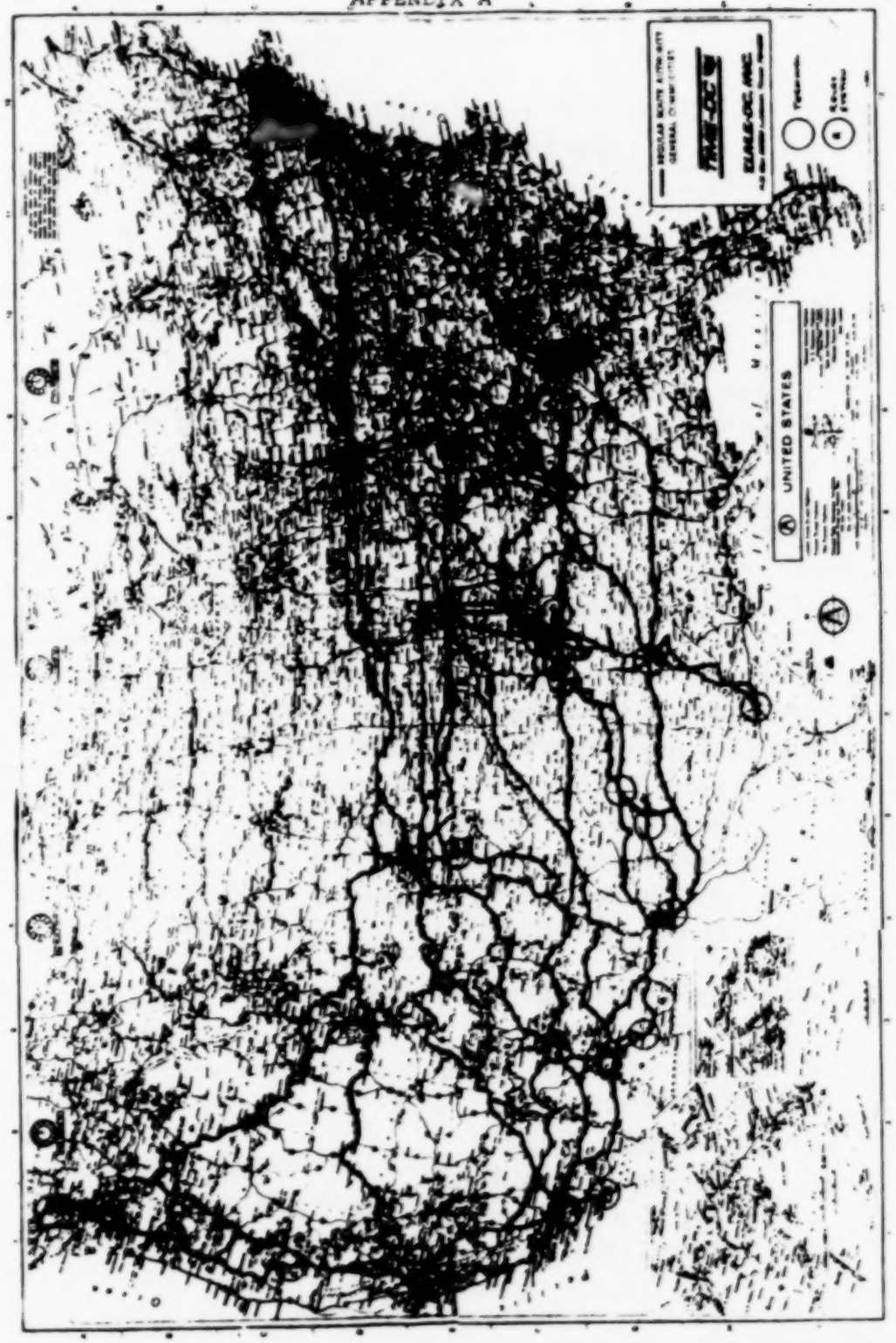
L.N.D. WELLS, JR., Esquire
MULLINAX, WELLS, MAUZY & BAAB, INC.
1601 National Bankers Life Building
Commerce & Ervay Streets
Dallas, Texas 75201
Attorneys for Defendants Teamsters, Machinists and Local 480 of Teamsters

Date: May 1, 1972

HALBERT O. WOODWARD
United States District Judge

APPENDIX A

[37] APPENDIX A [37]



APPENDIX B

Unions With Which T.I.M.E.-DC, Inc., Has Collective Bargaining Agreements

October 13, 1971

T.I.M.E.-DC, Inc.

Teamsters Local No. 294
Labor Temple
890 Third Street
Albany, New York 12205
Dock, Office
Nick Robilotto, President
Phone: (518) 489-5436

Teamster Local No. 728
2540 Lakewood Avenue, S.W.
Atlanta, Georgia 30315
Line, PU&D, Dock
Billy Walters, Business Agent
Weldon Mathis, President
Al Johnson, Secretary-Treasurer
Phone: (404) 622-0521

International Association of Machinists and Aerospace Workers
Atlanta District Lodge No. 46
157 Forsyth Street, S.W.
Atlanta, Georgia 30303
Mechanics—Servicemen
Roy M. Bond, Business Agent
Phone: (404) 523-6946

Teamsters Local No. 557
6000 Erdman Avenue
Baltimore, Maryland 21205
PU&D—Dock
Dan J. Mattio, Business Agent
Phone: (301) 485-9200

(Boston Terminal)

Teamsters Local No. 25
544 Main Street
Boston, Massachusetts 02129
PU&D—Dock
William J. McCarthy, President
Dan Halloran, Business Agent
Phone: (617) 241-8825

Teamsters Local No. 375
740 Seneca Street
Buffalo, New York 14210
PU&D—Dock
Stanley Clayton, President
Phone: ( ) 853-7014

International Association of Machinists
Lodge No. 1053
District Lodge No. 76
1218 Hotel Buffalo
Buffalo, New York
Mechanics
Nelson Duerr, Business Agent
Phone: ( ) 3-9218

Teamsters Local No. 515
4431 Bonny Oaks Drive
Chattanooga, Tennessee 37416

Line, PU&D, Shop, Office
David Halpenny, President
Bill Test, Line Business Agent
Johnny Edmonds, Dock, Office & Shop
Business Agent
Phone: (615) 622-1197

Teamsters Local No. 705
200 South Ashland Blvd.
Chicago, Illinois 60607
PU&D Drivers, Sales
Louis F. Peick, Secretary-Treasurer
Pete Janopoulous, Sales
Frank Kradke, Drivers
Phone: (312) 738-2800

Teamsters Local No. 710
4217 South Halsted Street
Chicago, Illinois 60609
Line, Dock, Spotters, Office
John Kelahan, President
W. Joyce, Secretary-Treasurer
Phone: (312) 254-3200

Teamsters Local No. 703
216 South Ashland Avenue
Chicago, Illinois 60607
Produce Drivers
M. J. Raimondi, Secretary-Treasurer
Phone: (312) 383-7285

International Association of Machinists
Local No. 701
133 South Ashland Avenue
Chicago, Illinois 60607
Mechanics
D. M. Burrows, President
Frank Laferno, Business Agent
Phone: (312) 738-0123

Building Service Employees International
Union No. 189
300 South Ashland Avenue, Suite 103
Chicago, Illinois 60607
Janitors
J. Kemp, President
Phone: (312) 829-0464

Teamsters Local No. 100
217 West 12th Street
Cincinnati, Ohio 45210
Line, PU&D—Dock, Shop
Ira L. Farmer, President
~~Hershel~~ O'Banion, Business Agent
Phone: (513) 721-2537

Teamsters Local No. 407
2070 East 22nd Street
Cleveland, Ohio 44115
PU&D—Dock
George Presser
Charles Moore
Phone: (216) 241-3746

Teamsters Local No. 745
1007 Jonelle Street
Dallas, Texas 75217
Dock, Office, Line, PU&D
W. L. Piland, Secretary-Treasurer
Phone: (214) 391-3187

(Decatur Terminal)

Teamsters Local No. 402
602 Geneva Avenue
Muscle Shoals, Alabama 35660
Line, PU&D
M. Gresham, President
Phone: (205) 383-2006

Office & Professional Employees International
Union Local No. 5, AFL-CIO
1520 High Street, Room 120
Denver, Colorado 80218
Office
John Mrozek, Business Agent
Phone: (303) 399-2593

International Association of Machinists and
Aerospace Workers
District Lodge No. 86 I.A.M.
360 Acoma Street, Room 314
Denver, Colorado 80223
Mechanics
Jim Duggan, Business Agent
Phone: (303) 744-3189

Teamsters Local No. 17
3245 Eliot Street
Denver, Colorado 80211
PU&D—Dock
Harry Marshall, Secretary-Treasurer
Charles Shadler, Business Agent
Phone: (303) 433-6496

Teamsters Local No. 961
3245 Eliot
Denver, Colorado 80211
Line, Automotive Service
Harry Bath, President
Phone: (303) 433-6348

Teamsters Local No. 299
2741 Trumbull Avenue
Detroit, Michigan 48216
PU&D—Dock, Office
R. McMaster
Phone: (313) 965-8750

Teamsters Local No. 941
6944 Commerce Avenue
El Paso, Texas 79915
Line, PU&D—Dock, Office
Joe Stovall, President
Phone: (915) 772-7437

Teamsters Local No. 215
216 North Fulton Avenue
Evansville, Indiana 47710
Line, PU&D—Dock, Office
Cliff Arden, President
James Foster, Secretary-Treasurer
Phone: (812) 425-5169

(Fountain Terminal)

Teamsters Local No. 146
702 S. Tejon
Colorado Springs, Colorado 80902
PU&D—Dock
Bob Menopace
John R. Dykes
Phone: (303) 632-1902

(Hammond—Special Commodities Div.)

Teamsters Local No. 612
125—57th Street, N.
Birmingham, Alabama 35212
Sam Webb, Business Agent
Phone: (205) 592-0302

(Hobbs Terminal)

Teamsters Local No. 492
108½ Yale Blvd., S.E.
Albuquerque, New Mexico 87106

PU&D—Dock
Glenn Jones
Phone: ( )

Teamsters Local No. 41
4501 Van Brunt Ext.
Kansas City, Missouri 64130
Line, PU&D—Dock, Office
Stanley W. Stanhope
Roy Williams
Phone: (816) 824-9310

International Association of Machinists Lodge 71
1113 E. 47th Street
Kansas City, Missouri 64110
Mechanics
Charles Patrick, Business Agent
Phone: ( )

Teamsters Local No. 552
4501 Van Brunt Ext.
Kansas City, Missouri 64130
Servicemen
T. B. McGinnis, Business Agent
Phone: (816) 531-7777

Teamsters Local No. 519
1328 Buchanan Street
Knoxville, Tennessee 37917
Line, PU&D—Dock
Hubert Payne, President
Phone: (615) 689-5427

Teamsters Local No. 878
6000 Patterson Avenue
P. O. Box 1238
Little Rock, Arkansas 72203

Line, PU&D—Dock
Odell Smith, President
Phone: (501) Locust 5-8455

Teamsters Local No. 180
1616 West Ninth Street
Los Angeles, California 90015
Line—Sleeper Drivers
Gene Shephard, Secretary-Treasurer
Phone: (213) 382-2395

Teamsters Local No. 224
1616 West Ninth Street
Los Angeles, California 90015
Line Singlemen Drivers
Robert Porter, Secretary-Treasurer
Phone: (213) 385-2025

Teamsters Local No. 208
1616 West Ninth Street
Los Angeles, California 90015
PU&D
Jim Easley, Secretary-Treasurer
Phone: (213) 381-3571

Teamsters Local No. 357
1616 West Ninth Street
Los Angeles, California 90015
Dock, Office
Barney Volkroff
Phone: (213) 381-3571

International Association of Machinists
Lodge No. 1186
214 South Loma Drive
Los Angeles, California 90026
Mechanics
Paul French. Gil Kurzband
Phone: (213) 483-6630

Teamsters Local No. 495
1616 West Ninth Street
Los Angeles, California 90015
Automotive Servicemen
Frank Hatfield, Jack Krasnick
Phone: (213) 381-3571

Teamster Local No. 89
3813 Taylor Blvd.
Louisville, Kentucky 40215
PU&D—Dock
Carl Rogers, Drivers Agent
Phone: (502) 368-5885

(Lubbock Terminal)

Teamsters Local No. 577
201 North Johnson Street
Amarillo, Texas 79107
Line, PU&D—Dock
E. J. Cherryhomes, President
Phone: (806) 373-4349

(Regular bid line drivers from LUB to ELP *only*)
Teamsters Local No. 941
El Paso, Texas
Teamsters Local No. 667
796 East Brooks Avenue
Memphis, Tennessee 38116
Line, PU&D, Shop, Office
C. H. Augustine, President
Phone: (901) 396-5331

Paris, Tennessee, Line, PU&D

Teamsters Freight Local No. 480
2913 Armory Drive
P. O. Box 8938
Nashville, Tennessee 37211

Line, PU&D, Shop, Office, Dock
Luther Watson, President
Phone: (615) 244-3122

(New York—Carteret, New Jersey)

Teamsters Local No. 560
707 Summit Avenue
Union City, New Jersey 07087
PU&D Drivers, Switchers, Office
Salvatore Provinzano, President
Phone: (201) 864-0051

(New York—Carteret, New Jersey)

Inland Terminal Workers Local No. 1730, ILA
265 West 14th Street
New York, New York 10011
Dock
Mike Walsh, President
John Walsh, Vice-President
Phone: (212) 924-4808

(North Bergen Terminal)

Teamsters Local No. 641
591 Summit Avenue, Room 600
Jersey City, New Jersey 07306
PU&D—Dock, Shop, Office
Mike Calabreese
Phone: (201) 795-0255

Teamsters Local No. 886
716 S. W. Third Street
Oklahoma City, Oklahoma 73125
Line, PU&D—Dock, Servicemen
K. R. Henderson, President
H. L. McDaniel, Secretary-Treasurer
Phone: (405) 236-1437

International Association of Machinists
Lodge No. 850
1644 N. W. Third Street
Oklahoma City, Oklahoma 73106
Mechanics
Ed Foster
Phone: (405) 235-4488

(Paris, Tennessee)

See: Memphis, Tennessee
Teamsters Local No. 107
105 Spring Garden Street
Philadelphia, Pennsylvania 19123
PU&D—Dock
John Cassidy
Phone: (215) 923-1480

Teamsters Local No. 104
1450 South 27th Avenue
Phoenix, Arizona 85009
Line, PU&D—Dock
B. M. Waggoner, Secretary-Treasurer
Horace Manning, President
Phone: (602) 252-9353

Servicemen—Local 274
Teamsters Local No. 81
1020 N. E. Third Street
Portland, Oregon 97222
Line, PU&D—Dock
Jack Alexander, Secretary-Treasurer
Phone: (503) 232-8171

Teamsters Local No. 223
1020 N. E. Third Street
Portland, Oregon 97222

Office
Lloyd Hildreth
Phone: (503) 232-8171

Teamsters Local No. 255
1020 N. E. Third Street
Portland, Oregon 97222
Servicemen
Larry Vance
Phone: (503) 232-8171

International Association of Machinists
Lodge No. 1005
310 Columbia, S. W.
Portland, Oregon 97201
Mechanics
Ralph Kauffman
Marvin Kelso, Business Agent
Phone: (503) 234-0968

Teamsters Local No. 150
2525 Stockton Blvd.
Sacramento, California 95817
PU&D—Dock, Office, Shop
Cecil Tobin, Business Agent
Phone: (916) 456-3812

(Sallisaw Relay)

Teamsters Local No. 373
4314 South Phoenix
P. O. Box 6268
Ft. Smith, Arkansas 72901
Line
Hoyle Sallis, President
Phone: (501) 646-1639

Teamsters Local No. 657
5626 Monterey
San Antonio, Texas 78237
PU&D—Dock, Office
Raymond Shafer
Phone: (512) 433-1405

Teamsters Local No. 542
4602 Mercury Street
San Diego, California
PU&D—Dock, Office
Norman (Blackie) Clark, Business Agent
Phone: (714) 278-1920

(San Francisco Terminal)

Teamsters Local No. 468
40 Hegenberger Pl.
Oakland, California 94621
Line
Al Applebaum, Secretary
Al Techiara, Business Agent
Phone: (415) 562-8713

Teamsters Local No. 70
70 Hegenberger Road
Oakland, California 94621
PU&D—Dock
James Menees
Phone: (415) 569-9317

Teamsters Local No. 856
25 Taylor Street, Room 700
San Francisco, California 94102
Office (Oakland)
Rudy Tham
Phone: (415) 474-0350

Teamsters Local No. 78
2315 Valdez
Oakland, California 94612
Servicemen
William York
Phone: (415) 638-4911

International Association of Machinists
Lodge 1546
10260 MacArthur Blvd.
Oakland, California 94605
Mechanics
DeWayne Williams
Nick Antone, Business Agent
Phone: (415) 638-6705

Teamsters Local No. 85
536 Bryant Street
San Francisco, California 94107
PU&D—Dock, Lumper
Tim Richardson
Phone: (415) 861-2912

Teamsters Local No. 741
552 Denny Way
Seattle, Washington 98109
Line, PU&D—Dock
Jerry Lavelle, Secretary
Phone: (206) 624-2085

Teamsters Local No. 154
552 John Street
Seattle, Washington 98109
Office
Rose Larson, Secretary
Phone: (206) 623-4730

Teamsters Local No. 44
552 Denny Way
Seattle, Washington 98109
Servicemen
E. R. Wainey
Phone: (206) 624-0580

International Association of Machinists
Lodge No. 289
1104 Mercer Street
Seattle, Washington 98121
Mechanics
Howard Hein
Phone: (206) 682-7230

Teamsters Local No. 245
1604 E. Kearney
Springfield, Missouri 65803
PU&D—Dock
Jim DeBerry
Phone: (417) 866-7206

Teamsters Local No. 600
303 South Grand Blvd.
St. Louis, Missouri 63103
Line, PU&D—Dock
Don Lane, President
Phone: (314) 289-2022

Teamsters Local No. 618
1641 Kingshighway, S.
St. Louis, Missouri 63110
Servicemen
Eddie Struckman, Business Agent
Phone: (314) 664-9800

Teamsters Local No. 688
1641 Kingshighway, S.
St. Louis, Missouri 63110
Office, Janitor
Robert Jackson
Phone: (314) 664-9800

International Association of Machinists
District No. 9, Lodge 777
12365 St. Charles Rock Road
Bridgeton, Missouri 63044
Mechanics
Tom Roach, Business Agent
Phone: ( ) 739-6200

Teamsters Local No. 439
1531 East Fremont Street
Stockton, California 95205
Line, PU&D—Dock, Office
Art Hardy, Secretary
Bob Plummer, Line Business Agent
Bill Dixon, PU&D Business Agent
Phone: (209) 466-0061

Teamsters Local No. 317
566 Spencer Street
Syracuse, New York 13204
PU&D—Dock
John Fortino, Business Agent
Phone: (315) 471-4164

Teamsters Local No. 20
435 South Hawley Street
Toledo, Ohio 43609
PU&D—Dock
Larry Steinberg
Phone: (419) 479-9561

Teamsters Local No. 310
20 West Flores
Tucson, Arizona 85705
PU&D—Dock
William McCollum, President
Phone: (602) 624-5262

Teamsters Local No. 523
123 West 11th Street
P. O. Box 1836
Tulsa, Oklahoma 74101
Line, PU&D—Dock
Charlie Harshfield
Phone: (918) 583-0440

Office & Technical Employees Local 15
S.T.E. 9, 246 East Broadway
Vancouver 10, B. C.
Office
Doug Gibson, Business Agent
Phone: (604) 874-5201

General Truck Drivers & Helpers Union
Local No. 31
490 East Broadway
Vancouver, B. C.
PU&D—Dock
S. B. Whitlock, President
Phone: (604) 874-3411

(Vinita Relay)

Teamsters Local No. 823
1601 Maiden Lane
P. O. Box 1299
Joplin, Missouri 64801
Line
Bill Kitts, President
Phone: (417) 623-0640

Teamsters Local No. 539
20 East Picadilly Street
Winchester, Virginia 22601
Line, Shop
Edsel Peacemaker, Secretary-Treasurer
Phone: (703) 662-4197

Teamsters Local No. 430
329 E. Poplar Street
York, Pennsylvania 17403
PU&D—Dock
William Billet
Phone: (717) 845-2731

(Yreka Terminal)

Teamsters Local No. 137
Drawer E
Marysville, California 95901
Line
Frank Woods
Phone: (961) 243-0232

(Orange, Conn. Terminal)

Teamsters Local No. 443
200 Wallace Street
New Haven, Connecticut 06511
Phone: ( )

(Providence, R. I. Terminal)

Teamsters Local 251
121 Brightridge Avenue
East Providence, Rhode Island 02914
Phone: ( )

List Showing, by Terminal and Job Classifications, the Local Union Which Represents T.I.M.E.-DC, Inc. Employees and the Applicable Collective Bargaining Agreement

Albany, New York

Road* Local 294, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

New York State Teamsters Joint Council Freight Division Over-the-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 294, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

New York State Teamsters Joint Council Freight Division —Local Cartage Supplement—For the period of April 1, 1970 to June 30, 1973.

Office Local 294, I.B.T.

Office Employees Agreement—Truck Drivers Local No. 294 (Albany, New York), Affiliated with the International Brotherhood of Teamsters, Warehousemen and Helpers of America—For the period of August 1, 1970 to October 31, 1973.

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* Road drivers will not be domiciled in Albany until after January 1, 1972.

Atlanta, Georgia

Road Local 728, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-the-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 728, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Local Freight Forwarding Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Mechanics Lodge 46, I.A.M.

Atlanta District Lodge No. 46 of the International Association of Machinists and Aerospace Workers—For the period of June 1, 1969 to May 31, 1972.

Baltimore, Maryland

Dock and City Local 557, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Maryland-District of Columbia Freight Council of the Eastern Conference of Teamsters—City Cartage Supple-

mental Agreement—For the period of April 1, 1970 to June 30, 1973.

Boston, Massachusetts

Dock and City Local 25, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

New England Freight Supplement—For the period of April 1, 1970 to June 30, 1973.

Buffalo, New York

Dock and City Local 375, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

New York State Teamsters Joint Council Freight Division —Local Cartage Supplement—For the period of April 1, 1970 to June 30, 1973.

Mechanics and Servicemen Lodge 1053, I.A.M.

Agreement between New York State Motor Truck Association Western Division and Auto Mechanics Lodge No. 1053, District No. 76—International Association of Machinists and Aerospace Workers, AFL-CIO, Buffalo, New York—For the period of April 1, 1970 to June 30, 1973.

Road* Local 375, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

New York State Teamsters Joint Council Freight Division Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Chattanooga, Tennessee

Road Local 515, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 515, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Pick-Up Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Mechanics and Service Local 515, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, con-

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* Road drivers will not be domiciled in Buffalo until after January 1, 1972.

tract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Garage Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Office Local 515, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Office Clerical Employees Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Chicago, Illinois

Sales Local 705, I.B.T.

Local 705 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America—Salesman and/or Freight Solicitors Agreement—For the period of October 1, 1969 to March 31, 1973.

City Local 705, I.B.T.

Joint Area Cartage Agreement—of—Local 705, I.B.T., Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local No. 705, an Affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America—For the period of April 1, 1970 to March 31, 1973.

Road Local 710, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, con-

tract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Over-The-Road Supplemental Agreement—Local Union 710 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America—For the period of April 1, 1970 to June 30, 1973.

Dock Local 710, I.B.T.

Labor Contract and Working Agreement covering Spotter, Fuelmen, Working Foremen, Dock, Tractor Drivers, Checkers, Stackers, Truckers, Wheelers and Hostlers—Employees of Common, Contract, and Private Carriers, Freight Forwarders and Carloading Companies and the Highway Drivers, Dockmen, Spotters, Rampmen, Meat, Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees—Local Union 710 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America—For the period of April 1, 1970 to and including March 31, 1973.

Office Local 710, I.B.T.

Labor Contract and Working Agreement Covering Office and Miscellaneous Truck Terminal Employees—Highway Drivers, Dockmen, Spotters, Rampmen, Meat, Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees, Local Union 710 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America—For the period of April 1, 1970 to and including March 31, 1973.

Mechanics and Servicemen Local 710, I.A.M.

Agreement covering Foremen, Mechanics, Helpers, Apprentices and all other employees coming under the juris-

diction of Automobile Mechanics Local No. 701, International Association of Machinists and Aerospace Workers, AFL-CIO—For the period of May 1, 1970 to April 30, 1973.

Janitors Local 189, S.E.I.U.

Agreement by and between Central Motor Freight Association, Inc. of Illinois and Motor Carrier Labor Advisory Council and Service Employees International Union, Local 189—For period of April 1, 1970 to and including March 31, 1973.

Cincinnati, Ohio

Road Local 100, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Over-The-Road Supplemental Agreement including Ohio Rider—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 100, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Local Cartage Supplemental Agreement—Ohio Addendum—For the period of April 1, 1970 to June 30, 1973.

Mechanics and Servicemen Local 100, I.B.T.

Cincinnati Garage Employees Agreement—Truck Drivers, Chauffeurs and Helpers Local Union No. 100, an Affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America—For the period of April 1, 1970 to June 30, 1973.

Cleveland, Ohio

Road* Local 407, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

New York State Teamsters Joint Council Freight Division Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 407, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Local Cartage Supplemental Agreement—Ohio Addendum—For the period of April 1, 1970 to June 30, 1973.

Dallas, Texas

Road Local 745, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

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* Road drivers will not be domiciled in Cleveland until after January 1, 1972.

Southern Conference Area Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 745, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Local Freight Forwarding Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Office Local 745, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Office Clerical Employees Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Decatur, Alabama

Road Local 402, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 402, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Denver, Colorado

Dock and City Local 17, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Road Local 961 and 710, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Over-the-Road Supplemental Agreement—Covering drivers employed by private, common and contract carriers for the period of April 1, 1970 to June 30, 1973.

National Master Freight Agreement and Central States Area Over-the-Road Supplemental Agreement for the period of April 1, 1970 to June 30, 1973, and

Service Local 961, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Automotive Shop and Truck Servicing Supplemental Agreement for the period of April 1, 1970 to June 30, 1973.

Office Local 5—Office or Professional Employees International Union—AFL-CIO

Collective Bargaining Agreement by and between Office and Professional Employees International Union Local No. 5, AFL-CIO, Denver, Colorado, and Western Empire Operators Association, Denver, Colorado, for and on behalf of T.I.M.E.-DC, Inc. from October 1, 1969 to October 1, 1972.

Mechanics Lodge 86, I.A.M.

Western States Trucking Maintenance Agreement—International Association of Machinists and Aerospace Workers, AFL-CIO—May 1, 1971 to June 30, 1973.

Detroit, Michigan

Dock and City Local 299, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Office Local 299, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Teamsters State of Michigan Office Workers Supplemental Agreement to the National Master Freight Agreement—For the period of April 1, 1970 to June 30, 1973.

El Paso, Texas

Dock and City Local 941, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Road Local 941, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Over-the-Road Supplemental Agreement—Covering drivers employed by private, common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Service Local 941, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Automotive Shop and Truck Servicing Supplemental Agreement for the period of April 1, 1970 to June 30, 1973.

Office Local 941, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Office Employees Supplemental Agreement—Covering office employees by private and common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Evansville, Indiana

Road Local 215, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Over-the-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 215, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Local Cartage Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Office Local 215, I.B.T.

Uniform Office Clerical Agreement covering employees of private, common, contract and local cartage carriers within the jurisdiction of Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 215.

For the period of April 1, 1970 to June 30, 1973.

Fountain, Colorado

Dock and City Local 146, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Hammond, Indiana (Special Commodities Division)
Local 142, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Iron and Steel and Special Commodity Rider—For the period of April 1, 1970 to June 30, 1973.

Hayward, California (SFO)

Dock and City Local 70, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, con-

tract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Joint Council No. 7—Local Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.*

Road Local 468, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Over-The-Road Supplemental Agreement—Covering drivers employed by private, common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Service Local 78, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Automotive Shop and Truck Servicing Supplemental Agreement for the period of April 1, 1970 to June 30, 1973.

Office Local 856, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

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* Locals 70 and 85 assert that there has been no meeting of the minds with respect to the contract and have refused to sign it. The Employer follows the provisions of the unsigned contract.

Rider to Western States Area—Office Employees Supplemental Agreement—Covering office employees by private and common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Mechanics Lodge 1546, I.A.M.

Western States Trucking Maintenance Agreement—International Association of Machinists and Aerospace Workers, AFL-CIO—May 1, 1971 to June 30, 1973.

Lumpers (SFO) Local 85, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Joint Council No. 7—Local Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.*

Hobbs, New Mexico

Dock and City Local 492, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Kansas City, Missouri

Road Local 41, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 41, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Local Cartage Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Office Local 41, I.B.T.

Office Agreement with the Over-The-Road and City Transfer Drivers, Helpers, Dockmen, and Warehousemen, Local Union No. 41 of Kansas City, Missouri, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America—For the period of April 1, 1970 to June 30, 1973.

Mechanics Lodge 778, I.A.M.

Kansas City Shop Contract for the period of June 1, 1970 to June 30, 1973, with District 71, Lodge 778, International Association of Machinists and Aerospace Workers, AFL.

Servicemen Local 552, I.B.T.

Kansas City Shop Contract for the period of June 1, 1970 to August 31, 1973 with Local Union Nos. 552 and 498,

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Knoxville, Tennessee

Road Local 519, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 519, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Little Rock, Arkansas

Road Local 878, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 878, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Los Angeles, California (Two Terminals)

City Local 208, I.B.T.

National Master Freight Agreement—Covering over-the road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Dock Local 357, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Road Local 224 and 180

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Over-the-Road Supplemental Agreement—Covering drivers employed by private, common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Service Local 495, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Automotive Shop and Truck Servicing Supplemental Agreement for the period of April 1, 1970 to June 30, 1973.

Office Local 357, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Office Employees Supplemental Agreement—Covering office employees by private and common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Mechanics Lodge 1186, I.A.M.

Western States Trucking Maintenance Agreement—International Association of Machinists and Aerospace Workers, AFL-CIO—May 1, 1971 to June 30, 1973.

Louisville, Kentucky

Dock and City Local 189, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

The Louisville, Kentucky Rider to the Central States Area Local Cartage Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Lubbock, Texas

Road Local 577, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-the-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 577, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Memphis, Tennessee

Road Local 667, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-The Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 667, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Mechanics and Service Local 667, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Garage Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Office Local 667, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Office Clerical Employees Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Nashville, Tennessee

Road Local 480, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 480, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Mechanics and Service Local 480, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Garage Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Office Local 480, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Office Clerical Employees Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Carteret, New Jersey (NYC)

City Local 560, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

New Jersey-New York Area General Trucking Supplement to the National Master Freight Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock Local 1730, I.L.A.

Contract between Inland Terminal Workers, Local 1730, I.L.A. and member Employers of the Motor Carriers Association of North Jersey and New York State Motor Truck Association, Inc. (Metro Division)—For the period of October 1, 1970 to July 31, 1973.

Office Local 560, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Office Employees Appendix to New Jersey-New York Area General Trucking Supplement to the National Master Freight Agreement—For the period of April 1, 1970 to June 30, 1973.

North Bergen, New Jersey

Dock and City Local 641, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

New Jersey-New York Area General Trucking Supplement to the National Master Freight Agreement—For the period of April 1, 1970 to June 30, 1973.

Office Local 641, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Office Employees Appendix to New Jersey-New York Area General Trucking Supplement to the National Master Freight Agreement—For the period of April 1, 1970 to June 30, 1973.

Mechanics Local 641, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Mechanics Appendix to New Jersey-New York Area General Trucking Supplement to the National Master Freight Agreement—For the period of April 1, 1970 to June 30, 1973.

Oklahoma City, Oklahoma

Road Local 886, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-the-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 886, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Mechanics Lodge 850, I.A.M.

Lodge 850 of the International Association of Machinists and Aerospace Workers, Oklahoma City, Oklahoma—For the period of April 1, 1970 to July 1, 1973.

Service Local 886, I.B.T.

General Drivers, Chauffeurs and Helpers Local Union No. 886, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America for the period of April 1, 1970 to July 1, 1973.

Orange, Connecticut

Dock and City Local 443, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

New England Supplemental Freight Agreement—For the period of April 1, 1970 to June 30, 1973.

Paris, Tennessee

Road Local 667, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 667, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Philadelphia, Pennsylvania

Dock and City Local 107, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Philadelphia, Pennsylvania and Vicinity Local Cartage Supplement—For the period of April 1, 1970 to June 30, 1973.

Phoenix, Arizona

Dock and City Local 104, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—PickUp and Delivery Local Cartage and Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Road Local 104, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Over-The-Road Supplemental Agreement—Covering drivers employed by private, common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Service Local 274, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Automotive Shop and Truck Servicing Supplemental Agreement for the period of April 1, 1970 to June 30, 1973.

Mechanics Lodge 519, I.A.M.

Western States Trucking Maintenance Agreement—International Association of Machinists and Aerospace Workers, AFL-CIO—May 1, 1971 to June 30, 1973.

Portland, Oregon

Dock and City Local 81, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Road Local 81, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Over-the-Road Supplemental Agreement—Covering drivers employed by private, common and

contract carriers for the period of April 1, 1970 to June 30, 1973.

Service Local 255, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Automotive Shop and Truck Servicing Supplemental Agreement for the period of April 1, 1970 to June 30, 1973.

Office Local 223, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Office Employees Supplemental Agreement—Covering office employees by private and common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Mechanics Lodge 1005, I.A.M.

Western States Trucking Maintenance Agreement—International Association of Machinists and Aerospace Workers, AFL-CIO—May 1, 1971 to June 30, 1973.

Providence, Rhode Island

Dock and City Local 251, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

New England Supplemental Freight Agreement—For the period of April 1, 1970 to June 30, 1973.

Sacramento, California

Dock and City Local 150, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Office Local 150, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Office Employees Supplemental Agreement—Covering office employees by private and common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Sallisaw, Oklahoma

Road Local 373, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-the-Road Supplemental Agreement—for the period of April 1, 1970 to June 30, 1973.

San Antonio, Texas

Dock and City Local 657, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Local Freight Forwarding Pick-up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Office Local 657, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Office Clerical Employees Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

San Diego, California

Dock and City Local 542, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreement—Cover-

ing drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Office Local 542, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Office Employees Supplemental Agreement—Covering office employees by private and common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Seattle, Washington

Dock and City Local 741, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Road Local 741, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Over-The-Road Supplemental Agreement—Covering drivers employed by private, common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Service Local 44, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Automotive Shop and Truck Servicing Supplemental Agreement for the period of April 1, 1970 to June 30, 1973.

Office Local 154, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Office Employees Supplemental Agreement—Covering office employees by private and common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Mechanics Lodge 289, I.A.M.

Western States Trucking Maintenance Agreement—International Association of Machinists and Aerospace Workers, AFL-CIO—May 1, 1971 to June 30, 1973.

Springfield, Missouri

Dock and City Local 245, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Local Cartage Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

St. Louis, Missouri

Road Local 600, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 600, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Local Cartage Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Office Local 688, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

St. Louis Office Employees Rider to the Central States Area Local Cartage Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Mechanics District No. 9, I.A.M.

Motor Carriers—Drayage and Cartage Garage Agreement —District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO, St. Louis, Missouri—For the period of July 1, 1970 to July 1, 1973.

Servicemen Local 618, I.B.T.

Motor Carrier—Service and Garage Agreement—Automotive, Petroleum and Allied Industries Employees Union, Local 618—Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America—For the period of April 1, 1970 to June 30, 1973.

Stockton, California

Dock and City Local 439, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage and Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Road Local 439, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Over-The-Road Supplemental Agreement—Covering drivers employed by private, common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Office Local 439, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, con-

tract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Office Employees Supplemental Agreement—Covering office employees by private and common and contract carriers for the period of April 1, 1970 to June 30, 1973.

Syracuse, New York

Dock and City Local 317, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

New York State Teamsters Joint Council Freight Division —Local Cartage Supplement—For the period of April 1, 1970 to June 30, 1973.

Toledo, Ohio

Dock and City Local 20, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Local Cartage Supplemental Agreement—Ohio Addendum—For the period of April 1, 1970 to June 30, 1973.

Tucson, Arizona

Dock and City Local 310, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, con-

tract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Pick-Up and Delivery Local Cartage Dock Workers Supplemental Agreement—Covering drivers employed by private, common, and contract carriers for the period of April 1, 1970 to June 30, 1973.

Tulsa, Oklahoma

Road Local 523, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Over-The-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Dock and City Local 523, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Southern Conference Area Local Freight Forwarding Pick-Up and Delivery Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Vancouver, B. C., Canada

Dock and City General Truck Drivers and Helpers Union Local 31

General Master Agreement with General Truck Drivers and Helpers Union, Local 31—For the period of January 1, 1971 through December 31, 1971.

Office Office and Technical Employees Union—Local 15

Canadian Motor Carriers Master Office Agreement with the Office and Technical Employees Union Local No. 15 —For the period of January 1, 1971 through December 31, 1973.

Vinita, Oklahoma (Relay)

Road Local 823, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central States Area Over-The-Road Supplemental Agreement including Ohio Rider—For the period of April 1, 1970 to June 30, 1973.

Winchester, Virginia

Road Local 539, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Virginia Freight Council Over-the-Road Supplemental Agreement—For the period of April 1, 1970 to June 30, 1973.

Mechanics and Service Local 539, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Virginia Freight Council Garage Supplemental Agreement —Garage Addendum—For the period of April 1, 1970 to June 30, 1973.

York, Pennsylvania

Road, City, and Dock Local 430, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Central Pennsylvania Over-the-Road and Local Motor Freight Supplemental Agreements—For the period of April 1, 1970 to June 30, 1973.

Yreka, California

Road Local 137, I.B.T.

National Master Freight Agreement—Covering over-the-road and local cartage employees of private, common, contract and local cartage carriers for the period of April 1, 1970 to June 30, 1973, and

Western States Area—Over-the-Road Supplemental Agreement—Covering drivers employed by private, common and contract carriers for the period of April 1, 1970 to June 30, 1973.

APPENDIX C

T.I.M.E.-DC, Inc. Location of Terminals and Other Facilities
Terminals—Freight Handling Facilities

Albany, New York
Atlanta, Georgia
Baltimore, Maryland
Boston, Massachusetts
Buffalo, New York
Chattanooga, Tennessee
Chicago, Illinois
Cincinnati, Ohio
Cleveland, Ohio
Dallas, Texas
Decatur, Alabama
Denver, Colorado
Detroit, Michigan
El Paso, Texas
Evansville, Indiana
Fountain, Colorado
Hammond, Indiana
Hobbs, New Mexico
Kansas City, Missouri
Knoxville, Tennessee
Little Rock, Arkansas
Los Angeles, California (LAX)
Los Angeles, California (LOS)
Louisville, Kentucky
Lubbock, Texas
Memphis, Tennessee
Nashville, Tennessee
New York City, New York (Carteret)
North Bergen, New Jersey
Oklahoma City, Oklahoma
Orange, Connecticut
Paris, Tennessee
Philadelphia, Pennsylvania
Phoenix, Arizona
Portland, Oregon
Providence, Rhode Island
Rochester, New York
Sacramento, California
San Antonio, Texas
San Diego, California
San Francisco, California
Seattle, Washington
Springfield, Missouri
St. Louis, Missouri
Stockton, California
Syracuse, New York
Toledo, Ohio
Tucson, Arizona
Tulsa, Oklahoma
Vancouver, B. C.
York, Pennsylvania

Total—51

Off-Line Sales Offices—Facilities Performing Sales Functions Only

Kalamazoo, Michigan
Montreal, Canada
Toronto, Canada

Total—3

Relay Stations—Line Driver Relay Stations With No Freight Handling Functions

Sallisaw, Oklahoma
Vinita, Oklahoma
Winchester, Virginia
Yreka, California

Total—4

General Office—General Accounting and Administrative Functions

Lubbock, Texas

Total—1

APPENDIX D

Pages 1-14, *infra*, of this Appendix consist of excerpts from the "Legislative History of Titles VII and XI of the Civil Rights Act of 1964" prepared by the United States Equal Employment Opportunity Commission and printed by the United States Government Printing Office. Pages 15-18, *infra*, of this Appendix consist of excerpts from the Congressional Record not found in the legislative history compiled by the EEOC.

A. Excerpts From the Legislative History Compiled by the EEOC

"3001. Part IV—Congressional Debate on Titles VII and XI

Introduction

"An important part of the legislative history of any statute is the congressional debate that preceded its adoption. Through a combination of extraordinary circumstances, however, the congressional debate that preceded the adoption of the Civil Rights Act of 1964, and particularly the Title VII equal employment opportunity provisions, assumed an almost overriding importance.

"The Title VII provisions that were adopted by the House and that were the subject of extensive discussion in the report of the House Judiciary Committee were modified substantially in the substitute measure adopted in the Senate. The substitute bill did not go through the usual comittee procedure. Instead, it was hammered out in informal bipartisan conferences, with Majority Leader Mansfield (D., Mont.), Minority Leader Dirksen (R., Ill.), and Senators Humphrey (D., Minn.) and Kuchel (R., Calif.) as the principals.

"As a result, there was no committee report on the Senate bill. Moreover, since the House then voted to accept the Senate bill without change, there was no Senate House conference report.

"With these usual guides to the legislative intent missing, the best available explanations of the intent behind the changes made by the Senate in the House bill are statements made at the opening of the Senate debate by Senators Dirksen (R., Ill.) and Humphrey (D., Minn.). Dirksen preceded his explanation

by an annotated text of the House bill showing the changes made by the Senate substitute.

"Also valuable in this respect are a comparative analysis of the two bills prepared by Congressman McCulloch (R., Ohio) and introduced into the Congressional Record by Senator Dirksen (R., Ill.) and a statement by Congressman Celler (D., N.Y.), floor manager for the bill in the House, explaining the changes made by the Senate in the House bill.

"So Part IV of this legislative history begins with the pertinent excerpts from the Dirksen-Humphrey statements, the comparative analysis of the Senate and House bills, and the Celler statement on the changes made by the Senate in the House bill. These are followed by three other statements of a general nature: (1) a bill introduced by Senators Clark (D., Pa.) and Case (R., N.J.) as a substitute for both the House bill and the Dirksen amendment; (2) an interpretative memorandum on Title VII submitted jointly by Senators Clark (D., Pa.) and Case (R., N.J.), as Senate floor managers of the House-approved bill; and (3) a response submitted by Senator Clark (D., Pa.) to a memorandum by Senator Dirksen (R., Ill.) asking questions relating to Title VII.

"3002.

"Following these major statements are excerpts from the congressional debate organized by subject matter. There are six principal sections: (1) Comparisons of Bills; (2) Constitutionality, (3) Coverage and Exemptions, (4) Discrimination Forbidden, (5) Enforcement and Administration, and (6) Title XI Provisions. But the debate in each section is organized under numerous subheadings.

"Preceding each excerpt is an editors' note explaining the relevance of the debate and a reference to the date and page

number of the bound Congressional Record where the excerpt appears. Three asterisks (* * *) are used to indicate the omission of extraneous text."

"3003. A. Major Congressional Statements.

Humphrey Explanation of Titles VII and XI

"Editor's Note: On June 4, 1964, Senator Humphrey (D., Minn.) presented to the Senate a detailed explanation of the changes made in the House bill (H.R. 7152) by Senate substitute amendment No. 656, the compromise worked out in a series of conferences among Senate leaders and Justice Department officials. The parts of the explanation relating to Titles VII and XI follow.

"Mr. Humphrey. * * *

"3005.

"Ninth. A new subsection 703(j) is added to deal with the problem of racial balance among employees. The proponents of this bill have carefully stated on numerous occasions that Title VII does not require an employer to achieve any sort of racial balance in his work force by giving preferential treatment to any individual or group. Since doubts have persisted, subsection (j) is added to state this point expressly. This subsection does not represent any change in the substance of the title. It does state clearly and accurately what we have maintained all along about the bill's intent and meaning."

"3009. Clark Response to Questions on Title VII

"Editor's Note: Early in the Senate debate on the House-approved bill (H.R. 7152), Senator Dirksen (R.,Ill.) submitted a memorandum questioning a number of provisions in the bill.

As one of the Senate floor managers of the bill, Senator Clark (D.,Pa.) prepared answers to the questions relating to Title VII. The text of the Clark response follows, except for questions and answers dealing with provisions that later were changed or deleted by the Senate substitute.

"3013. Mr. Clark. * * *

"Question: Would the same situation prevail in respect to promotions, when that management function is governed by a labor contract calling for promotions on the basis of seniority? What of dismissals? Normally, labor contracts call for 'last hired, first fired.' If the last hired are Negroes, is the employer discriminating if his contract requires they be first fired and the remaining employees are white?

"Answer: Seniority rights are in no way affected by the bill. If under a 'last hired, first fired' agreement a Negro happens to be the 'last hired,' he can still be 'first fired' as long as it is done because of his status as 'last hired' and not because of his race.

"Question. If an employer is directed to abolish his employment list because of discrimination what happens to seniority?

"Answer: The bill is not retroactive, and it will not require an employee to change existing seniority lists.

* * *

"Objection: Under the bill, employers will no longer be able to hire or promote on the basis of merit and performance.

"Answer: Nothing in the bill will interfere with merit, hiring, or merit promotion. The bill simply eliminates consideration of color from the decision to hire or promote.

"Objection: If the employer discharges a Negro, he must prove that the dismissal has nothing to do with race. When

an employer promotes or increases the pay of a white employee, he must show that he was not biased against the Negro worker who was not promoted.

"Answer: The Commission must prove by a preponderance that the discharge or other personnel action was because of race.

"Objection: The bill would require employers to establish quotas for nonwhites in proportion to the percentage of nonwhites in the labor market area.

"Answer: Quotas are themselves discriminatory."

"3039. Interpretative Memorandum on Title VII

"Editor's Note: On April 8, 1964, Senators Clark (D., Pa.) and Case (R., N.J.) introduced into the Congressional Record an interpretative memorandum on Title VII of the House-approved H.R. 7152, for which they were floor managers in the Senate. The text of the memorandum, with portions dealing with provisions later changed in the Senate substitute deleted, follows.

"Senate 4-8-64 pp. 7212-7215

"3040. * * *

"With the exception noted above [relating to communists], therefore, section 704 prohibits discrimination in employment because of race, color, religion, sex, or national origin. It has been suggested that the concept of discrimination is vague. In fact it is clear and simply has no hidden meanings. To discriminate is to make a distinction, to make a difference in treatment or favor, and those distinctions or differences in treatment or favor which are prohibited by section 704 are those which are based on any five of the forbidden criteria: race,

color, religion, sex, and national origin. Any other criterion or qualification for employment is not affected by this title.

"There is no requirement in Title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, whatever such a balance may be, would involve a violation of Title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race. It must be emphasized that discrimination is prohibited as to any individual. While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against.

* * *

"Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier (However, where waiting lists for employment or training are, prior to the effective date of the title, maintained on a discriminatory basis, the use of such lists after the title takes effect may be held an unlawful subterfuge to accomplish discrimination)."

"3061. B. Congressional Debate by Subject Matter

Comparison of Bills

"Editor's Note: Senator Holland (D., Fla.) explained the jury-trial and double-jeopardy amendments incorporated by the

Senate in the House-passed bill and discussed change made by the Dirksen-Mansfield substitute.

"Mr. Holland. * * *

"3062.

"Section 704(j) expressly provides that the title is not to be interpreted to require anyone to give preferential treatment to any individual or group because of race, color, religion, sex, or national origin, or to correct a racial or religious, and so forth, imbalance between the number of persons of a particular race, and so forth, employed by an employer and the total number of persons of that race, religion, and so forth, living in a particular community, State, or other area."

"3092.

"Editor's Note: During the debate in the Senate, Senator Clark (D., Pa.) undertook to rebut the charge that Title VII was intended to rob all Americans of important rights for the benefit of one segment of the population.

"Mr. Clark. * * *

"I was rather startled to hear my good friend from North Carolina make the statement, which I believe I took down accurately, that this was a title to rob all Americans of important rights for the benefit of one segment of the population.

"Mr. President, this title would not deprive anyone of any rights. All it does is to say that no American, individual, labor union, or corporation, has the right to deny any other American the very basic civil right of equal job opportunity.

"The bill does not make anyone higher than anyone else. It establishes no quotas. It leaves an employer free to select whomever he wishes to employ. It enables a labor union to admit anyone it wishes to take in. It tells an employment agency that it can get a job for anyone for whom it wishes to get a job."

"3187. Discrimination Forbidden: Quota Hiring

"Editor's Note: Senator Allott (R., Colo.) introduced an amendment making clear that Congress, in enacting Title VII, did not intend to impose a quota system on employers and unions to force them to overcome racial imbalance. The sense of his amendment was incorporated in the Dirksen-Mansfield compromise and appears in Section 703(j) of the Act.

"Mr. Allott. * * *

"The amendment (No. 568) is as follows:

"On page 42 between lines 16 and 17 insert the following:

'(f) The court shall not find, in any civil action brought under this title, that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint solely on the basis of evidence that an imbalance exists with respect to the total number of percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency, admitted to membership, or [p. 3188] classified, by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, without supporting evidence of another nature that the respondent has engaged in or is engaging in such practice.'"

"3242.

"Editor's Note: In the course of the debate, Senator Hill (D., Ala.) charged that Title VII would undermine seniority rights, deny unions their representation rights under the Taft Hartley Act and the Railway Labor Act, and would impose the re-

quirement of racial balance. In rebuttal to these charges, Senator Clark (D., Pa.) placed in the record a letter from Walter Reuther, president of the Auto Workers, and a statement from the Department of Justice.

"Senate 2-8-64 pp. 7205-7207

* * *

"3244-3245.

"Mr. Clark: I have also had prepared by the Department of Justice a summary statement in rebuttal to the argument made by the Senator from Alabama [Mr. Hill] to the effect that Title VII would undermine the vested rights of seniority; that it would deny to unions their representation rights under the National Labor Relations Act and the Railway Labor Act; that the operation of Title VI would in some way affect adversely the rights of organized labor; and that Title VII would impose the requirement of racial balance.

"I submit that those assertions of the able Senator from Alabama are untenable.

"Mr. President, I ask unanimous consent that the rebuttal to the argument prepared at my request by the Department of Justice be printed in full in the Record at this point in my remarks.

"There being no objection, the statement was ordered to be printed in the Record as follows:

"Reply to Arguments Made by Senator Hill

"First, it has been asserted that Title VII would undermine vested rights of seniority. This is not correct. Title VII would have no effect on seniority rights existing at the time it takes effect. If, for example, a collective bargaining contract provides that in the event of layoffs, those who were hired last

must be laid off first, such a provision would not be affected in the least by Title VII. This would be true even in the case where owing to discrimination prior to the effective date of the title, white workers had more seniority than Negroes. Title VII is directed at discrimination based on race, color, religion, sex, or national origin. It is perfectly clear that when a worker is laid off or denied a chance for promotion because under established seniority rules he is 'low man on the totem pole' he is not being discriminated against because of his race. Of course, if the seniority rule itself is discriminatory, it would be unlawful under Title VII. If a rule were to state that all Negroes must be laid off before any white man, such a rule could not serve as the basis for a discharge subsequent to the effective date of the title. I do not know how anyone could quarrel with such a result. But, in the ordinary case, assuming that seniority rights were built up over a period of time during which Negroes were not hired, these rights would not be set aside by the taking effect of Title VII. Employers and labor organizations would simply be under a duty not to discriminate against Negroes because of their race. Any differences in treatment based on established seniority rights would not be based on race and would not be forbidden by the title.

"Second, it has been asserted that it would be possible to deny unions their representation rights under the National Labor Relations Act and the Railway Labor Act. This is not correct. Nothing in Title VII or anywhere else in this bill affects rights and obligations under the NLRA and the Railway Labor Act. The procedures set up in Title VII are the exclusive means of relief against those practices of discrimination which are forbidden as unlawful employment practices by sections 704 and 705. Of course, Title VII is not intended to and does not deny to any individual, rights and remedies which he may pursue under other Federal and State statutes. If a given action should violate both Title VII and the National Labor Relations Act, the National Labor Relations Board would

not be deprived of jurisdiction. To what extent racial discrimination is covered by the NLRA is not entirely clear. I understand that the National Labor Relations Board has presently under consideration a case involving the duties of a labor organization with respect to discrimination because of race. At any rate, Title VII would have no effect on the duties of any employer or labor organization under the NLRA or under the Railway Labor Act, and these duties would continue to be enforced as they are now. On the other hand, where the procedures of Title VII are invoked, the remedies available are invoked, the remedies available are those set out in section 707(c), injunctive relief against continued discrimination, plus appropriate affirmative action including the payment of backpay. No court order issued under Title VII could affect the status of a labor organization under the National Labor Relations Act or the Railway Labor Act, or deny to any union the benefits to which it is entitled under those statutes.

"Third, it has been asserted that the operation of Title VI will in some way affect the rights of organized labor. This is incorrect. Title VI deals with programs of Federal financial assistance. I know of no financial assistance rendered to labor organizations under the National Labor Relations Act or the Railway Labor Act, the Davis-Bacon Act, or the Walsh-Healey Act. These organizations benefit, as do all American workers, from the beneficent policies of these statutes, but there is no flow of cash, goods or credit from the Federal Government to these organizations and it is to such assistance that Title VI is directed. Title VI would no more authorize the suspension of a union's status as a collective bargaining agent because of discrimination than it would authorize the Bureau of Customs to stop collecting duty on goods competing with those produced by an employer who discriminates. There is simply no such authority anywhere in the bill.

"Finally, it has been asserted Title VII would impose a requirement for 'racial balance.' This is incorrect. There is no

provision, either in Title VII or in any other part of this bill, that requires or authorizes any Federal agency or Federal court to require preferential treatment for any individual or any group for the purpose of achieving racial balance. No employer is required to hire an individual because that individual is a Negro. No employer is required to maintain any ratio of Negroes to whites, Jews to gentiles, Italians to English, or women to men. The same is true of labor organizations. On the contrary, any deliberate attempt to maintain a given balance would almost certainly run afoul of Title VII because it would involve a failure or refusal to hire some individual because of his race, color, religion, sex, or national origin. What Title VII seeks to accomplish, what the civil rights bill seeks to accomplish is equal treatment for all.

"Mr. Clark: Mr. President, it is clear that the bill would not affect seniority at all. It would not affect the present operation of any part of the National Labor Relations Act or rights under existing labor laws. The suggestion that racial balance or quota systems would be imposed by this proposed legislation is entirely inaccurate.

* * *

"The businessman's personnel problems have not swollen to mammoth proportions, nor has he been forced to spend the best part of his time in court as an alternative to hiring every minority group member who presents himself for employment. His freedom is not restricted except for his freedom to be biased in his personnel policies. He is not hounded unjustly, as evidenced by the fact that discrimination actually has been found in about half the cases investigated."
"3259.

"Editor's Note: Senator Humphrey (D., Minn.) offered the following explanation of enforcement procedures under Title VII.

"Mr. Humphrey: * * *

"The title does not provide that any preferential treatment in employment shall be given to Negroes or to any other persons or groups. It does not provide that any quota systems may be established to maintain racial balance in employment. In fact, the title would prohibit preferential treatment for any particular group, and any person, whether or not a member of any minority group, would be permitted to file a complaint of discriminatory employment practices. The title does not provide for the reinstatement or employment of a person, with or without back pay, if he was fired or refused employment or promotion for any reason other than discrimination prohibited by the title. The title contains no provisions which would jeopardize union seniority systems, nor would anything in the title permit the Government to control the internal affairs of employers or labor unions.

"3283. Enforcement and Administration:

EEOC—Enforcement Powers, Procedures

"Editor's Note: In the following statement, Congressman Celler (D., N.Y.) sought to refute charges that the EEOC would have the power to prevent a business from employing and promoting the people it wished and that EEOC would have authority to rectify existing 'racial or religious imbalance.'

"Mr. Celler: • • •

"3284.

"It has been asserted also that the bill would destroy worker seniority systems and employee rights vis-a-vis the union and the employer. This again is wrong. The bill would do no more than prevent a union, as it would prevent employers, from discriminating against or in favor of workers because of their race, religion, or national origin.

"It is likewise not true that the Equal Employment Opportunity Commission would have power to rectify existing 'racial or religious imbalance' in employment by requiring the hiring of certain people without regard to their qualifications simply because they are of a given race or religion. Only actual discrimination could be stopped. And there is, of course, no provision whatever for depriving unions of the rights and benefits under existing law."

B. Excerpts From the Congressional Record Relating to the Phrase "Pattern or Practice" of Discrimination:

110 Con.Rec. 12722—Sen. Humphrey:

> ". . . in significant cases of discrimination in employment the United States would have adequate authority to initiate legal action."

110 Con.Rec. 14239—Sen. Humphrey:

> "It is meant to exclude action in sporadic instances of violation of rights which will be left to correction by individual complaints under other sections of these title. It would be clear that an establishment or employer that consistantly or avowedly denies rights under these titles is engaged in a 'pattern or practice of resistance.' "

110 Con.Rec. 14270—Sen. Humphrey:

> "Such a pattern or practice would be present only when the denial of rights consists of something more than an isolated sporadic incident, but is repeated, routine, or of a generalized nature. There would be a pattern or practice . . . if a company repeatedly and regularly engaged in acts prohibited by the statute. . . . The point is that single, insignificant, isolated acts of discrimination . . . would not justify a finding of a pattern or practice. . . ."

110 Con.Rec. 15895—Rep. Celler:

> "A pattern or practice of resistance would exist, for example . . . where a single company regularly refused to treat Negroes without discrimination. There would be no authority for the Attorney General to sue a single firm for an isolated or sporadic act of discrimination."

During hearings on the Voting Rights Act of 1957, the following colloquy between Senator McClellan and Deputy Attorney General Walsh over the meaning of the words "pattern" and "practice" indicates that, at that time at least, the Attorney General's office was familiar with the usual meaning of the words (H.R. 8601, 86th Cong., 2nd Sess. 68):

> "Sen. McClellan: Now, what constitutes a pattern?
>
> "Mr. Walsh: A pattern of discrimination would be discrimination that was widespread beyond an individual case. It would be the burden to be carried by an Attorney General which would be to prove this was the usual rather than the unusual situation.
>
> "Sen. McClellan: What constitutes a practice?
>
> "Mr. Walsh: Practice would be very much the same thing. Not only was it usual but it has been indulged—I mean, the words have their generic meaning; there is no word of art involved.
>
> "Sen. McClellan: To establish a practice there [sic] wouldn't there have to be repeated acts?
>
> "Mr. Walsh: I think that would be the general sense of it; yes, sir."

C. Excerpts From the Congressional Record Relating to Established Seniority, Racial Preferences and Racial Quotas:

110 Con.Rec. 1518—Rep. Celler:

> "Even then [after trial], the Court could not order that any preference be given to any particular race, religion or other group, but would be limited to ordering an end to discrimination."

110 Con.Rec. 1600—Rep. Minish:

> "Under Title VII . . . no quota system will be set up. . . ."

110 Con.Rec. 2558—Rep. Goodell:

> "There is nothing here as a matter of legislative history that would require racial balancing. * * * There is no quota involved."

110 Con.Rec. 12617—Sen. Muskie:

> "Title VII seeks to afford all American equal opportunity in employment without discrimination. * * * Not 'racial balance.' Only equal opportunity."

110 Con.Rec. 5808—Sen. Keating:

> ". . . no quota system is provided in the bill."

110 Con.Rec. 6549—Sen. Humphrey:

> "Contrary to the allegations of some opponents to this title, there is nothing in it that will give any power . . . to any court to require hiring . . . of employees in order to meet a racial 'quota' or to achieve a certain racial balance."

See also 110 Con.Rec. 5092, 5423 and 13088 where Senator Humphrey makes substantially similar statements.

110 Con.Rec. 7218—Sen. Clark:

"Quotas are themselves discriminatory."

110 Con.Rec. 8921—Sen. Williams:

". . . to hire Negro solely because he is a Negro is discrimination . . ."

110 Con.Rec. 9113—Sen. Keating:

"For . . . a court to order preferential treatment to a particular minority group would clearly be inconsistent with the guarantees of the Constitution."

110 Con.Rec. 9601—Sen. Fulbright:

After pointing out that no preferential treatment is contemplated, Senator Fulbright observed: "If discrimination is difficult to prove, it is doubly difficult to disprove."

110 Con.Rec. 11848—Sen. Humphrey:

"In fact, the title would prohibit preferential treatment for any . . . member of any minority group . . ."

110 Con.Rec. 12723—Sen. Humphrey:

"The proponents of this bill have carefully stated on numerous occasions that Title VII does not require an employer to achieve any sort of racial balance in his work force by giving preferential treatment to any individual or group. Since doubts have persisted, subsection (j) is added to state this point expressly."

110 Con.Rec. 13080—Sen. Clark:

"The bill * * * establishes no quotas."

110 Con.Rec. 14465—Bipartisan Civil Rights Newsletter No. 28 submitted by Sen. Hart:

"Under Title VII, not even a court, much less the commission, could order racial quotas . . ."

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

(Title Omitted in Printing)

Filed May 1, 1972

D. Plaintiff's List of Persons for Whom It Is Seeking Individual Relief, Apart From Class Relief

Hayward, California Terminal (San Francisco)

Name	Relief Sought
Bennie Whitfield	Seniority as of February 4, 1969 for purposes of bidding on and holding a road driver or a city driver job, and back pay.
Richard H. Stinson	Seniority as of November 11, 1969 for purposes of bidding on and holding a road driver job, and back pay.
Otis Zeno	Assigned a truck-tractor of a working condition equivalent to those assigned to other city drivers who have assigned routes.

Denver, Colorado Terminal

Name	Relief Sought
Lenard Harrison	Seniority as of October 5, 1966 for purposes of bidding on and holding a road driver job, and back pay.
Ermitt Ceophalas Jones	Seniority as of October 15, 1970 for purposes of bidding on and holding a road driver job, and back pay.
Edgar L. Glenn	Offered the first salesman vacancy with an adequate probationary period, and back pay.
Jerome Pastwick	Seniority as of March 1965 for purposes of bidding on and holding a dockman job, and back pay.

Vernon and Montebello, California Terminals (Los Angeles)

Name	Relief Sought
James Edward Neely	Seniority as of April 23, 1966 for purposes of bidding on and holding a road driver job, and back pay.
William Thomas Simpson, Jr.	Seniority as of April 23, 1966 for purposes of bidding on and holding a road driver job, and back pay.
George Taylor	Seniority as of November 18, 1966 for purposes of bidding on and holding a road driver job, and back pay.
Marvin Richard Vestal	Seniority as of February 1, 1969 for purposes of bidding on and holding a road driver job, and back pay.

David E. O'Neal	Offered the first salesman vacancy with an adequate probationary period, and back pay.
Iris Darden Hicks	Seniority as of August 29, 1966 for purposes of bidding on and holding a billing clerk job, or offered the first equivalent office position at the Irving, Texas (Dallas) Terminal, and back pay.

Nashville, Tennessee Terminal

Name	Relief Sought
William Edward Dobbin	Seniority as of May 21, 1966 for purposes of bidding on and holding a dockman job, and back pay.
James Wallace, Jr.	Seniority as of November 2, 1965 for purposes of bidding on and holding a dockman or city driver job, and back pay.
Wallicia Quovadis Majors	Seniority as of March 11, 1969 for purposes of bidding on and holding an entry level clerical job, and back pay.

Oklahoma City, Oklahoma Terminal

Name	Relief Sought
J. W. Walters	Seniority as of September 28, 1968 for purposes of bidding on and holding a road driver job, and back pay.
Willie L. Henderson	Seniority as of September 11, 1970 for purposes of bidding on and holding a road driver job, and back pay.

Irving, Texas Terminal (Dallas)

Name	Relief Sought
Walter Jean Price	Seniority as of June 4, 1968 for purposes of bidding on and holding a city driver job, and back pay.
Raymond L. Castro	Seniority as of May 2, 1970 for purposes of bidding on and holding a dockman job, and back pay.
Michael Arriaga	Seniority as of May 21, 1970 for purposes of bidding on and holding a city driver job, and back pay.
Tereso J. Gonzales	Seniority as of August 19, 1970 for purposes of bidding on and holding a city driver job, and back pay.
Johnny G. Coronado	Seniority as of November 25, 1970 for purposes of bidding on and holding a city driver job, and back pay.
Harrell E. Holly	Seniority as of November 20, 1970 for purposes of bidding on and holding a road driver job, and back pay.

San Antonio, Texas Terminal

Name	Relief Sought
Foster Barnes	Seniority as of August 13, 1970 for purposes of bidding on and holding a city driver job, and back pay.
Guadalupe Martinez	Seniority as of May 10, 1968 for purposes of bidding on and holding

a road driver job at the Irving, Texas (Dallas) terminal, and back pay.

Memphis, Tennessee Terminal

Name	Relief Sought
Fred Williams, Jr.	Seniority as of July 20, 1969 for purposes of bidding on and holding a road driver job, and back pay.

Respectfully submitted

WILLIAM B. FENTON
JOEL G. CONTRERAS
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

(Title Omitted in Printing)
Filed June 15, 1972

E. **Individuals for Whom Plaintiff Seeks Relief**

Pursuant to the request of the Court on May 12, 1972, plaintiff submits the names of those individuals for whom it seeks relief in these actions, the relief sought for each, and the reason that relief is sought.

Hayward, California Terminal

Job as of 3-31-71 and Name	Relief Sought	Reason
(Serviceman)		
J. F. Johnson	Offered vacancy in line driver job on basis of his company seniority date and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for line driver job when hired, and not considered for transfer to that job thereafter.
(City Heavy Duty Driver)		
G. F. Navarro	" "	" "
(City Pick up and Delivery Driver)		
C. Cordova	" "	" "
C. King	" "	" "
J. R. Madrid	" "	" "
C. Rodriquez	" "	" "
L. D. Torres	" "	" "
J. B. Trujillo	" "	" "
(Dockman)		
A. Aguilar	" "	" "
H. M. Davis, Jr.	" "	" "
J. C. Keith	" "	" "
J. H. Munoz	" "	" "
J. Plasencia	" "	" "
T. B. Posada	" "	" "
P. C. Rivers	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
R. P. Santos	" "	" "
G. W. Sullivan	" "	" "
E. Tomlinson	" "	" "
(City Pick up and Delivery Driver)		
Otis Zeno	Assigned a truck-tractor of a condition equivalent to those assigned to other city drivers who have assigned routes.	He is the only city driver at the terminal who has an assigned route but who has not been given an assigned tractor.
(non-employees)		
Bennie Whitfield	Offered vacancy in line driver job on basis of a company seniority date of February 4, 1969, or a dockman or city driver job on basis of company seniority date of May 10, 1969, and, if found qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	Not considered for a line driver job, or a dockman or city driver job, when one was filled after he applied.

Job as of 3-31-71 and Name	Relief Sought	Reason
Richard Stinson	Offered vacancy in line driver job on basis of a company seniority date of November 11, 1969, and, if found qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	Not considered for a line driver job when one was filled after he applied.
Denver, Colorado Terminal		
(Serviceman)		
E. Barr	Offered vacancy in line driver job on basis of his company seniority date and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for line driver job when hired, and not considered for transfer to that job thereafter.
J. A. Brame	" "	" "
C. Cato	" "	" "
B. T. Chism	" "	" "
M. Craft	" "	" "
R. A. Fisher	" "	" "
R. Franklin	" "	" "
D. W. Gadison	" "	" "
E. E. Guerra	" "	" "
W. Henderson	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
H. H. Jefferson	" "	" "
E. Knight	" "	" "
F. Mallard	" "	" "
S. Moore	" "	" "
L. D. Parker	" "	" "
D. L. Patterson	" "	" "
G. L. Santifer	" "	" "
V. Sims	" "	" "
T. S. Stephens	" "	" "
C. Thorpe	" "	" "
(Serviceman-Tireman)		
M. Montoya	" "	" "
F. L. Parker	" "	" "
C. Threats	" "	" "
(City Heavy Duty Driver)		
B. Brito	" "	" "
R. Costillo	" "	" "
(City Pick up and Delivery Driver)		
H. Estrada	" "	" "
D. L. Henton	" "	" "
F. Fernandez	" "	" "
R. D. Robles	" "	" "
D. M. Simon	" "	" "
W. Taylor	" "	" "
G. E. Vigil	" "	" "
P. J. Vigil	" "	" "
(Dockman)		
F. H. Anderson	" "	" "
P. J. Crespin	" "	" "
H. Leslie	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
J. O. Ortega	" "	" "
J. N. Pina	" "	" "
J. L. Quintana	" "	" "
J. Sammon	" "	" "
M. Trujillo	" "	" "
F. Trujillo, Jr.	" "	" "
W. Vaughn	" "	" "
C. L. Veals	" "	" "
G. Williams	" "	" "
(Hostler)		
P. P. Hernandez	" "	" "
F. C. Ortega	" "	" "
(non-employees)		
Lenard Harrison	Offered vacancy in line driver job on basis of a company seniority date of October 6, 1966, and, if found qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	Not considered for a line driver job when one was filled after he applied (for initial employment).
Earmitt C. Jones	Offered vacancy in line driver job on basis of company seniority date of October 15, 1970, and, if found qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	Not considered for a line driver job when one was filled after he applied.

Job as of 3-31-71 and Name	Relief Sought	Reason
Jerome Pastwick	Offered first vacancy in dockman job on basis of his original seniority date of March 1965, with seniority as of that date for all purposes including bidding and layoff.	Dismissed for advising minorities of their rights under the collective bargaining agreement.
Vernon, California Terminal (Los Angeles)		
(Serviceman)		
R. Bracamontes	Offered vacancy in line driver job on basis of his company seniority date and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for line driver job when hired, and not considered for transfer to that job thereafter.
J. H. Collins	" "	" "
W. Collins	" "	" "
M. Ezell, Jr.	" "	" "
J. H. Gambrell	" "	" "
T. Guidry	" "	" "
J. Kelley	" "	" "
E. E. Linarez	" "	" "
E. McGee	" "	" "
T. D. Purvis	" "	" "
C. Ramah	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
H. Rey	" "	" "
F. E. Robinson	" "	" "
C. B. Telles	" "	" "
K. L. Williams	" "	" "
(City Heavy Duty Driver)		
W. Atkins	" "	" "
M. O. Carrillo	" "	" "
C. Collins	" "	" "
M. T. Espinosa	" "	" "
J. A. Floyd	" "	" "
G. E. Freeny	" "	" "
T. J. Gaglio	" "	" "
A. A. Garcia	" "	" "
R. H. Harris	" "	" "
L. D. Hughey	" "	" "
H. R. Jimenez	" "	" "
F. T. Lara	" "	" "
E. E. Marquez	" "	" "
J. I. McIver	" "	" "
F. Mendivil	" "	" "
A. M. Moniz	" "	" "
R. F. Patton	" "	" "
W. Richards	" "	" "
E. C. Rudison	" "	" "
M. Serna, Jr.	" "	" "
D. J. Torres	" "	" "
D. J. Valenzuela	" "	" "
T. W. White	" "	" "
(City Pick up and Delivery Driver)		
W. E. Agee	" "	" "
W. Battle	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
G. Escajeda, Jr.	" "	" "
T. Espinosa	" "	" "
A. Guarrera	" "	" "
G. F. Haynes	" "	" "
A. Hernandez	" "	" "
J. High	" "	" "
W. G. Jenkins	" "	" "
J. V. Lopez	" "	" "
A. Martinez	" "	" "
M. D. Melenez	" "	" "
G. M. Miranda	" "	" "
J. R. Rivers	" "	" "
A. M. Rodriguez	" "	" "
F. G. Salinas	" "	" "
K. J. White	" "	" "
E. Zamarripa	" "	" "
J. Solis	" "	" "
(Dockman)		
J. E. Aurelio	" "	" "
H. Bausley	" "	" "
J. L. Bosques	" "	" "
S. Burton	" "	" "
L. A. Byers	" "	" "
R. G. Compos	" "	" "
A. Carlos	" "	" "
E. S. Castro	" "	" "
F. Cazares	" "	" "
J. Corley	" "	" "
M. B. Corona	" "	" "
I. E. Daniels	" "	" "
S. M. Davis	" "	" "
M. E. Dean	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
D. L. De Leon	" "	" "
J. S. Delgado	" "	" "
C. Edwards	" "	" "
J. A. Garcia	" "	" "
R. Garcia	" "	" "
R. E. Glenn, Jr.	" "	" "
S. A. Golden	" "	" "
R. L. Height	" "	" "
H. Herrera	" "	" "
J. Jefferson, Jr.	" "	" "
T. Jernigan	" "	" "
D. Johnson	" "	" "
G. E. Johnson	" "	" "
E. Jones	" "	" "
L. D. Jones	" "	" "
W. T. Jones, III	" "	" "
E. C. Macho	" "	" "
F. X. Martinez	" "	" "
J. L. Melero	" "	" "
E. D. Molina	" "	" "
A. Montijo	" "	" "
H. F. Navarro	" "	" "
H. B. Nettles	" "	" "
D. E. O'Neal	" "	" "
L. A. Palacio	" "	" "
J. F. Pandolfo	" "	" "
O. Pantoja, Jr.	" "	" "
B. Ponce, Jr.	" "	" "
A. C. Porter	" "	" "
R. J. Quevedo	" "	" "
M. Ramirez	" "	" "
J. Ramos	" "	" "
H. L. Reed	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
W. J. Roddie	" "	" "
R. H. Rodriquez	" "	" "
J. L. Smith	" "	" "
J. Talamantes	" "	" "
J. Taylor	" "	" "
R. Tellez	" "	" "
F. Thompson	" "	" "
J. Thompson	" "	" "
G. L. Torres	" "	" "
J. F. Torres	" "	" "
S. Tussey	" "	" "
J. L. Walters	" "	" "
R. E. Washington	" "	" "
R. A. Wesley	" "	" "
A. L. Williams (1951)	" "	" "
H. Woodson	" "	" "
F. Wright, Jr.	" "	" "
A. L. Williams (1956) (Hostler)	" "	" "
W. Davis	" "	" "
H. Freeny	" "	" "
L. Henderson	" "	" "
C. Merrill	" "	" "
(Dockman, also listed above)		
David E. O'Neal	Offered first vacancy in salesman job, with adequate probationary period.	Not considered for salesman job when he applied in 1965 or 1966.

Job as of 3-31-71 and Name	Relief Sought	Reason
(non-employees)		
James E. Neely	Offered vacancy in line driver job on basis of a company seniority date of June 24, 1966, and, if qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	Not considered for a line driver job when one was filled after he applied.
William T. Simpson, Jr.	Offered vacancy in line driver job on basis of a company seniority date of June 24, 1966, and, if found qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	Not considered for a line driver job when one was filled after he applied.
George Taylor	Offered vacancy in line driver job on basis of a company seniority date of November 18, 1966 and, if found qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	Not considered for a line driver job when one was filled after he applied (for initial employment).
Marvin R. Vestal	Offered vacancy in line driver job on basis of a company seniority date of February 1, 1969 and, if found qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	Not considered for a line driver job when one was filled after he applied.

Job as of 3-31-71 and Name	Relief Sought	Reason
(Serviceman)		
Mrs. Iris Darden Hicks	Offered first vacancy in billing clerk job with a company seniority date of August 29, 1966 for all purposes including bidding and layoff, or, at Mrs. Hicks' option, offered the first vacancy in an equivalent office position at the company's Irving, Texas terminal	Not given promised training in billing clerk job, subjected to harassment, and dismissed from that job because of her race.
Montebello, California Terminal (Los Angeles)		
T. P. Escalera	Offered vacancy in line driver job on basis of his company seniority date and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for line driver job when hired, and not considered for transfer to that job thereafter.
T. O. Gastelo	" "	" "
F. S. Herrera	" "	" "
I. V. Vasquez	" "	" "
J. Vasquez	" "	" "
(City Heavy Duty Driver)		
J. D. Almarez	" "	" "
E. L. Banuelos	" "	" "
R. T. Nebo	" "	" "
J. Passi	" "	" "

Job as of 3-31-71 and Name	Relief Sought		Reason	
R. J. Phillips	"	"	"	"
J. Plant, Jr.	"	"	"	"
A. B. Sotelo	"	"	"	"
J. B. Sotelo	"	"	"	"
W. B. Turner	"	"	"	"
(City Pick up and Delivery Driver)				
J. R. Castanon	"	"	"	"
G. Cooper	"	"	"	"
A. Dominguez	"	"	"	"
A. Gomez	"	"	"	"
A. R. Gomez	"	"	"	"
V. A. Hardin	"	"	"	"
R. Parral	"	"	"	"
M. S. Portugal	"	"	"	"
A. H. Solorzano	"	"	"	"
L. E. Villa	"	"	"	"
C. E. Walter	"	"	"	"
G. G. Welsh	"	"	"	"
(Dockman)				
F. D. Blanco	"	"	"	"
N. Cantu	"	"	"	"
J. S. Cuevas	"	"	"	"
W. E. Ellis	"	"	"	"
R. Flores	"	"	"	"
W. J. Gonsalves	"	"	"	"
F. Hasson, Jr.	"	"	"	"
D. A. Hernandez	"	"	"	"
T. A. Madrid	"	"	"	"
E. Martinez	"	"	"	"
A. Newsom	"	"	"	"
A. B. Rodriguez	"	"	"	"

Job as of 3-31-71 and Name	Relief Sought		Reason	
E. W. Turner	"	"	"	"
R. R. Williams	"	"	"	"
W. M. Williams	"	"	"	"
(Hostler)				
R. Montelongo	"	"	"	"
I. M. Villarruel	"	"	"	"
Nashville, Tennessee Terminal				
(Serviceman)				
A. M. Bender	(1) Offered vacancy in mechanic, line driver, dockman, city driver and hostler jobs on basis of his company seniority date and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff; (2) provided training for mechanic job if he desires to qualify for that job; (3) offered vacancy in supervisor job for which qualified.		Not considered for jobs of mechanic, line driver, dockman, city driver or hostler when hired, and not considered for transfer to those jobs thereafter; not provided training for mechanic or considered for promotion to supervisor.	
J. Bradley	"	"	"	"
J. E. Buchanan	"	"	"	"
S. Burks	"	"	"	"
C. Collier	"	"	"	"
H. L. Davis	"	"	"	"

Job as of 3-31-71 and Name	Relief Sought	Reason
S. W. Gordon	" "	" "
T. R. Johnson	" "	" "
J. A. Keeling	" "	" "
R. L. Rucker	" "	" "
A. Smith	" "	" "
M. Washington, Jr.	" "	" "
J. E. Winfrey	" "	" "
(Serviceman-Tireman)		
L. Gant	" "	" "
L. F. Jones	" "	" "
R. L. Williams	" "	" "
(non-employees)		
William E. Dobbin	Offered vacancy in a dockman job on basis of a company seniority date of May 21, 1966, and, if found qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	Not considered for a dockman job when one was filled after he applied.
James Wallace, Jr.	Offered vacancy in a dockman or city driver job on basis of a company seniority date of November 2, 1965, and, if found qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	Not considered for a dockman or city driver job when one was filled after he applied.

Job as of 3-31-71 and Name	Relief Sought	Reason
Atlanta, Georgia Terminal		
(City Pick Up and Delivery Driver)		
G. A. Amos	Offered vacancy in line driver job on basis of his company seniority date and, if found qualified, to use a seniority date of August 2, 1958 in that job for all purposes, including bidding and layoff.	Not considered for a line driver job when such jobs were filled by employees from the city classifications at the terminal, after a line driver operation was established there.
J. Amos	" "	" "
C. F. Bankston	" "	" "
J. J. Calhoun	" "	" "
W. Laney	" "	" "
R. Parks	" "	" "
R. R. Tucker	" "	" "
(Dockman)		
E. Franklin	" "	" "
W. Minniefield	" "	" "
P. Rucker (1948)	" "	" "
P. Rucker (1951)	" "	" "
(Hostler)		
B. F. Lee	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
(City Pick up and Delivery Driver)		
J. Batchelor	Offered vacancy in line driver job on basis of his company seniority date and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for a line driver job when hired, and not considered for transfer to that job thereafter.
W. Heath	" "	" "
T. Perry	" "	" "
(Dockman)		
T. E. Perry	" "	" "
(Hostler)		
J. Banks	" "	" "

Chicago, Illinois Terminal

(Serviceman-Tireman)		
J. Anderson	Offered vacancy in city driver and line driver jobs on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for jobs of city driver and line driver when hired, and not considered for transfer to that job thereafter.
H. Christmas	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
(Dockman)		
F. E. Alfaro	" "	" "
J. Cerda	" "	" "
H. G. Cuevas	" "	" "
M. Gomez	" "	" "
M. Guerrero	" "	" "
O. R. Mendoza	" "	" "
F. Rangel, Jr.	" "	" "
(Janitor-Maintenance Man)		
D. Conner	" "	" "
H. Guyse	" "	" "
C. McDalton	" "	" "
A. Austin	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.
L. Ware	" "	" "

Oklahoma City, Oklahoma Terminal

(Serviceman)		
D. M. Blanton	" "	" "
A. M. Castillo	" "	" "
T. Jordan, Jr.	" "	" "
J. S. Mojica	" "	" "
D. Smith	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
(non-employee)		
J. W. Walter	Offered vacancy in line driver job on basis of a company seniority date of March 1, 1969 and, if found qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	Not given objective consideration for job of line driver, subjected to harassment, and dismissed from that job because of his race.
Irving, Texas Terminal (Dallas)		
(City Pick up and Delivery Driver)		
O. Barber	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.
San Antonio, Texas Terminal		
(non-employee)		
Foster Barnes	Offered a vacancy in a city driver or	Not hired as a regular

Job as of 3-31-71 and Name	Relief Sought	Reason
	dockman job on basis of a company seniority date of August 13, 1970 and, if found qualified, to use that seniority date in that job for all purposes, including bidding and layoff.	city driver or dockman because of his race.
Memphis, Tennessee Terminal		
(City Pick up and Delivery Driver)		
G. W. Fisher	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter until December 1968.
A. Henderson	" "	" "
L. Jones	" "	" "
J. L. McNeal	" "	" "
R. D. Parker	" "	" "
D. C. Robinson	" "	" "
R. Sanders	" "	" "
L. R. Taylor	" "	" "
J. H. Walker	" "	" "
F. Wighley	" "	" "
J. Wiley	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
(Dockman)		
E. E. Ballard	" "	" "
J. Glasper	" "	" "
W. H. Harrison	" "	" "
C. Momon	" "	" "
M. Smith	" "	" "
S. Wilburn	" "	" "
C. Woods	" "	" "
J. R. Woods	" "	" "
(Hostler)		
R. T. Jones	" "	" "
S. Murry	" "	" "
(City Pick up and Delivery Driver)		
R. D. Campbell	Offered vacancy in line driver job on basis of a seniority date of August 9, 1958, and, if found qualified, to take that seniority date to that job for all purposes, including bidding and layoff.	Not allowed to transfer from city classification to line driver after August 8, 1958 because the company stopped all such transfers after that date and until December 1968 rather than permit black employees in city classification with more seniority to so transfer.

Job as of 3-31-71 and Name	Relief Sought	Reason
W. G. Gately	" "	" "
B. B. Hodges	" "	" "
O. Holcomb	" "	" "
A. C. Taylor	" "	" "
(Dockman)		
J. L. Benefield	" "	" "
J. L. Boudreaux	" "	" "
W. G. Bryan	" "	" "
H. S. Holliday	" "	" "
T. Luttrell	" "	" "
O. McElroy	" "	" "
L. E. Nichols	" "	" "
J. W. O'Neill	" "	" "
O. L. Shaw	" "	" "
P. C. Thomas	" "	" "
J. Williamson	" "	" "
(Line Driver)		
A. L. Thornton	Permitted to use his original company seniority date in the job of line driver for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter until December 1968.
C. Taylor	" "	" "
C. Glover	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
B. Wilbanks	Permitted to use a seniority date of August 9, 1958 in the job of line driver for all purposes, including bidding and layoff.	Not allowed to transfer from city classification to line driver after August 8, 1958 and until December 1968 because the company stopped all such transfers after August 8, 1958 and until December 1968 rather than permit black employees in city classification with more seniority to so transfer.
F. Yount	"	"
H. Kelley	"	"
G. Jacques	"	"
(non-employee)		
Fred Williams, Jr.	Offered vacancy in a line driver job on basis of a company seniority date of July 25, 1969 and, if found qualified, to use that seniority date in	Not considered for a regular line driver job because of his race when one was filled

Job as of 3-31-71 and Name	Relief Sought	Reason
	that job for all purposes, including bidding and layoff.	by a new hire after he was employed as a casual; subjected to harassment and not recalled for casual work.
Phoenix, Arizona Terminal		
(Serviceman)		
W. E. Conner	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.
(City Heavy Duty Driver)		
G. Amaya	"	"
P. Estrada	"	"
A. M. Villarreal	"	"
(City Pick up and Delivery Driver)		
M. L. Cobb	"	"
D. E. Lechuga	"	"

Job as of 3-31-71 and Name	Relief Sought	Reason
(Dockman)		
I. W. Jackson	" "	" "
J. E. Young	" "	" "
Lubbock, Texas Terminal		
(Serviceman)		
H. De La Rosa	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.
A. Larkin	" "	" "
(Dockman)		
T. Lewis	" "	" "
Chattanooga, Tennessee Terminal		
(Serviceman)		
C. E. Jenkins	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.

Job as of 3-31-71 and Name	Relief Sought	Reason
(Dockman)		
J. Gates	" "	" "
J. C. Grayson	" "	" "
R. J. Moorer	" "	" "
Paris, Tennessee Terminal		
(Dockman)		
J. Littleton, Jr.	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.
Cincinnati, Ohio Terminal		
(City Pick up and Delivery Driver)		
E. Howard	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.

Job as of 3-31-71 and Name	Relief Sought	Reason
Kansas City, Missouri Terminal		
(Serviceman)		
I. Jackson	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.
N. O. Pinon	" "	" "
Knoxville, Tennessee Terminal		
(Dockman)		
L. R. Chandler	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.
F. R. Davis	" "	" "
C Wadley	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
Portland, Oregon, Terminal		
(Serviceman)		
C. G. Dorsey	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.
W. L. Moore	" "	" "
(City Pick up and Delivery Driver)		
A. R. Coca	" "	" "
St. Louis, Missouri Terminal		
(Dockman)		
G. Brock	Offered vacancy in line driver job on basis of his company seniority date, and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.
H. L. Thorpe, Jr.	" "	" "

Job as of 3-31-71 and Name	Relief Sought	Reason
Seattle, Washington Terminal		
(Serviceman)		
G. W. Hendricks	Offered vacancy in line driver job on basis of his company seniority date and, if found qualified, to take his seniority to that job for all purposes, including bidding and layoff.	Not considered for job of line driver when hired, and not considered for transfer to that job thereafter.
(Serviceman-Tireman)		
D. Hernandez	" "	" "
(Dockman)		
O. I. Braswell	" "	" "
C. R. Timmons	" "	" "

Note: The names of the above individuals were taken from plaintiff's exhibit 204, which is a printout of the company's employees as of March 31, 1971, and various seniority rosters which are in evidence.

Respectfully submitted

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WILLIAM B. FENTON
JOEL G. CONTRERAS
Attorneys
Department of Justice
Washington, D. C. 20530
Attorneys for Plaintiff

III

JUDGMENT, ORDER OR DECISION IN QUESTION

The following Opinions and Orders of the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Northern District of Texas are printed in a separate bound Appendix to the Petition for Writ of Certiorari in case No. 75-636. See the following reprint of the Index to the above Appendix for page references.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-636

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

APPENDIX TO PETITION FOR CERTIORARI

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Note—Pages 227-268 of this Appendix were originally designated for these Opinions and Orders.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

(Title Omitted in Printing)

CA. 5-868 and CA. 5-897 (Consolidated)

B. Order

The Court has received and considered defendants' motions for stay of a portion of the Court's Order of March 1, 1973, as well as plaintiff's opposition thereto.

After due consideration, it appears that the notification to those listed in Appendix "C" of the Court's Order would cause undue hardship to the defendants as well as undue confusion to the individuals listed in Appendix "C"; especially in light of the fact that vacancies will not be open for those individuals until the final outcome of this case has been determined in the appellate courts.

It is therefore Ordered that defendants' motions for stay of portion of order be and hereby is Granted.

The Clerk will furnish a copy hereof to each attorney.

Entered this 29th day of May, 1973.

/s/ HALBERT O. WOODWARD
United States District Judge

[1*] IV

ANY OTHER PARTS OF THE RECORD TO WHICH THE PARTIES WISH TO DIRECT THE COURT'S PARTICULAR ATTENTION

In the United States District Court
For the Northern District of Texas
Lubbock Division

(Titles Omitted in Printing)

CA 5-868 and CA 5-897 (Consolidated)

* * * * * * *

A. REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Trial on the Merits)

(May 3, 4, 9, 10, 11 and 12, 1972)

* * * * * * *

[7] The Court: All right. Let's have the government—Have you got some live witnesses to start with?

Mr. Fenton: Well, Your Honor, first of all, I'm not sure what the Court's procedure is on this, but we'd like to see that the pre-trial order itself is offered in evidence, or made an evidentiary exhibit.

The Court: Well, I have no objection to that. Of course, the stipulations will be part of the evidence in this case as a matter of record, of course, and I will not take as evidence the positions of the parties in here. I don't think that is proper evidence. In other words, you contend certain things in this pre-trial order. The facts in the pre-trial order do not make the evidence. Now,

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* Numbers appearing in brackets in text indicate page numbers of original stenographic transcript of proceedings.

subject to those restrictions, I have no objection to making it a part of the record. Whatever you want to do on that.

Mr. Fenton: Very good, Your Honor.

We want to be sure that the stipulations which are contained in the pre-trial order——

The Court: Don't you think the proper thing to do right now is just to order that the stipulations contained in the pre-trial order will be in evidence in this case. Is that all?

Mr. Fenton: I so offer.

The Court: All right. I'm going to admit that as evidence, and of course, it will be considered by the **[8]** Court.

The remainder of the pre-trial order is not evidence as such, and of course, it is part of the record in the case.

All right.

Mr. Fenton: I believe the defendant company wanted to substitute a couple of pages. Would you gentlemen want to do that at this time?

Mr. Schuler: Well, I think there are a couple of additions, Your Honor.

The Court: All right, sir. Now, for the record, you have substituted by letter to me of April 28th, Pages 43 and 44, and I'm going to substitute that from the original tendered.

Now, what else do you have that you need——

Mr. Schuler: All right. I wanted to—I wanted to make sure that on the original of the pre-trial order that Appendix D had been——

The Court: Appendix B?

Mr. Schuler: D.

The Court: B as in boy?

Mr. Schuler: D as in Doyle.

The Court: Let me see here. The one inside has Appendix D as in dog attached. I have it before me right now.

Mr. Schuler: That Appendix D is related to **[9]** in the stipulation, so I believe that appendix and other appendices are a part of the stipulation, and are part of the record.

The Court: Well, I haven't examined that in detail, but that is my recollection. Is there any objection from the government on having Appendix A, B, C and D introduced as part of the record in this case and as evidence?

Mr. Fenton: No objection, Your Honor.

The Court: All right. That will be so done.

Mr. Fenton: I would also like to state on the record with respect to the pre-trial that plaintiff wants to make two deletions from deposition designations.

The Court: All right. What page, sir?

Mr. Fenton: On Page 39.

The Court: Have you got a copy there, Ruby?

The Clerk: Yes, sir.

The Court: All right. Let's follow it.

Mr. Fenton: Delete the designation of Charles Edwin Taylor. We have prepared a summary of Mr. Taylor's deposition, which has been agreed upon.

The Court: Have I received that yet? It's among these other summaries?

Mr. Fenton: Yes, sir. That was filed with the other summaries, Your Honor.

[10] The Court: All right. Anything else?

Mr. Fenton: And also on Page 37 of the pre-trial order we would delete the deposition designation of John Batchelor.

The Court: John who?

Mr. Fenton: Batchelor. He's listed under the Atlanta depositions.

The Court: Yes, sir.

Mr. Fenton: Again, Mr. Batchelor's deposition was summarized and the summary was agreed upon.

The Court: Any objection to those two being deleted since they are summarized, gentlemen?

Mr. Schuler: No objection, Your Honor.

The Court: All right. I'll mark deleted and initial it on each of those.

All right, sir.

Mr. Fenton: Now, plaintiff would next offer into evidence the agreed upon summaries.

The Court: Just a minute. Is there anything further concerning the pre-trial order?

Mr. Schuler: Yes.

The Court: Let's get that completed.

Mr. Schuler: On Page 47 of the pre-trial order there is a reference to the designated portions of depositions that the defendant company wants to rely on. We **[11]** had sent those to you by letter of March 31, 1972, and I would simply like to have you, if you will, insert that letter in the pre-trial order at that place.

The Court: Well, I have your letter of March 31.

Well, this should be added, the letter of March 31 and the attachments.

Mr. Schuler: Yes.

The Court: That letter should be added after Page 47.

Mr. Schuler: That is correct, Your Honor.

The Court: All right. That will be done.

Mr. Schuler: And the exhibits for the company and the index of the exhibits are now correct, I believe, in your copy.

The Court: Yes, sir. Now, how about your letter of April 3rd?

Mr. Schuler: Well, I don't have—let me find that.

The Court: It refers back to March 31, this letter, and you've got an additional Page 5. I just wanted the record to reflect that correctly.

Mr. Schuler: Let me find that letter, Your Honor.

The Court: All right, sir. Well, I have **[12]** the original here if it will help.

While your'e looking for that, Mr. Fenton, you wrote me on March 28th and I believe that those designations were attached to the pre-trial order, isn't that correct?

Mr. Fenton: That is correct, Your Honor. Those designations are the same ones which are set out in the pre-trial order.

The Court: That is what I determined. I just wanted to make certain of that so we will not have——

Ruby, give this to him. I think you're just correcting Page 5 there. There it is. Look at it.

Mr. Schuler: I think you're correct. That does correct Page 5.

The Court: Let me have it so I can get these all inserted correctly. I am going to put your letter of March 31 in there. I'm going to take the Page 5 off of that and substitute the Page 5 that you sent to me on April 3rd, and all of those will be consisting of your letter and the Page 5 of the attached letter and we will designate that as Page 47(a) through 47(f). They will be placed in the pre-trial order accordingly.

Now, was there anything else on the pre-trial order that we need to——

Mr. Schuler: Yes, Your Honor. I think maybe something that we can take up orally at a later time. **[13]** There are two additional—well, there are a series of additional stipulations that we have agreed upon with Mr. Fenton. They are——

The Court: Have they been reduced to writing and signed by Counsel?

Mr. Schuler: Yes, I do have Mr. Fenton's letter, and I think I would like to ask that it be appended to the pre-trial order if Mr. Fenton has no objection.

The Court: Identify the letter and ask Mr. Fenton.

Mr. Fenton: I have no objection, Your Honor.

The Court: All right. That letter is going to be placed in. I think we ought to keep these stipulations together.

Mr. Fenton: Do we have the Court's permission to make Xerox copies of that letter?

The Court: I'll try to get a master copy. What page do the stipulations start on here?

Mr. Schuler: It will be inserted after Page 13(c), Your Honor.

The Court: All right. The letter from the Department of Justice dated April 10th, 1972, two-page letter, will be disignated as Pages 13(d) and 13(e), and as I understand it, Counsel has stipulated that the matters contained in the **[14]** letter of April 10th, 1972 is a stipulation of the correct facts as stated in the letter, is that correct?

Mr. Fenton: It is a stipulation as to authenticity and genuineness, Your Honor. Now, there are a couple of exhibits that are —that the defendant company, I think, intend to offer into evidence later that we have some question about the relevancy of, but we agree that the exhibits as stated in that letter are authentic and genuine.

* * * * * * *

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[16] The Court: Mr. Fenton, are you ready to bring us some testimony?

Mr. Fenton: Well, Your Honor, we do want to offer a few more exhibits at this time.

Next we would like to offer in evidence the agreed upon summaries of the depositions of the nineteen deponents, and these were filed with the Court on April 19th, 1972.

The Court: Have you got the original of those, Ruby?

Mr. Fenton: With the Court's permission, I will read the names of those deponents into the record at this time.

The Court: Have they been marked as exhibits, yet?

Mr. Fenton: They have not yet been marked, **[17]** Your Honor. They were filed with the Court on April 19th.

The Court: I have copies right here. I want to keep them for my personal reading, and the originals which are somewhere here will be the exhibits. So give me the name of the deponents.

Mr. Fenton: All right. The first is James W. Frazier, Patrick B. Allen, Charles Steele.

The Court: Just read them out for the reporter and then hand your list to the clerk and she can dig them out and mark them later.

Mr. Fenton: Bill Whitsett; Gilbert Vigil; Reverend Edgar L. Glenn; Joseph L. Quintana; Tobey Beck; Berne L. Powell; Victor L. Watkins; Jackson Bruce Stroud; John Batchelor; Willie L. Henderson; Roy Walker; William K. Neely; Barton O'Brien; R. D. Parker; Charles D. Glover and Charles Edwin Taylor.

The Court: All right. I'll ask the clerk to dig those out of the record and mark them with the appropriate numbers. Since there has been no number previously designated, just take the numbers in sequence.

Mr. Fenton: With respect to the numbering system, we were using the sequential number system while we were taking the depositions.

The Court: All right. What number do you want on these?

[18] Mr. Fenton: We also have numbered in advance other exhibits that we are going to offer.

The Court: Yes, sir. What number do you want on these?

Mr. Fenton: I think our last number was 239.

The Court: All right. We'll check that out.

Mr. Fenton: 240, I think.

The Court: All right. Let's call a witness. In fact, let's have all the witnesses in the courtroom now come forward and be sworn at this time.

Are you ready to call your witnesses, Mr. Fenton?

Mr. Fenton: Well, Your Honor, I did want to offer into evidence some more exhibits.

The Court: All right. Let's move along here. I'm ready to hear some testimony. We've gone thirty minutes and haven't heard anything yet.

Mr. Fenton: At this time we would offer into evidence Plaintiff's Exhibit 203(a), 203(b), 203(c) and 203(d), and these are the collective bargaining agreements which T.I.M.E.-DC has with various unions.

The Court: All right. Any objection from Counsel?

Mr. Schuler: No objection.

[19] The Court: They are admitted.

(Plaintiff's Exhibits 203(a), 203(b), 203(c) and 203(d) received into evidence by the Court as Plaintiff's Exhibits 203(a), 203(b), 203(c) and 203(d)—Collective bargaining agreements.)

The Court: Next?

Mr. Fenton: We would next offer into evidence what has been marked as Plaintiff's Exhibit 204.

The Court: All right. Identify that, please, sir.

Mr. Fenton: This is a printout of the personnel list as of March 31, 1971, which was furnished by T.I.M.E.-DC to attorneys for the Justice Department.

The Court: That's all the employees of the entire system, systemwide.

Mr. Fenton: That's correct, Your Honor.

The Court: Any objection?

Mr. Schuler: No objection.

The Court: It's admitted.

(Plaintiff's Exhibit 204 received into evidence by the Court as Plaintiffs' Exhibit 204—Printout of personnel list.)

Mr. Fenton: With the permission of the company, I would like to read into the record exactly what this particular exhibit contains.

The Court: All right, sir.

[20] Mr. Schuler: No objection, Your Honor.

Mr. Fenton: This exhibit shows as of March 31, 1971, for each of the terminals, off-line sales offices, relay stations and the general office of T.I.M.E.-DC, the following information: Each employee's name, employee number, job code, status, birth date, employed date, license expiration date, physical examination date, grade of pay, hourly or salary, section, ethnic code and termination date, if any.

Also, the front sheet in Plaintiff's Exhibit 204 contains the status code and the ethnic codes used for the employees in the printout in Exhibit 204, and the following five sheets in Exhibit 204 contain job identifications for the job code numbers used for the employees in Exhibit 204.

Is that agreeable, gentlemen?

Mr. Schuler: Yes, it is.

The Court: All right. That is admitted along with the statement. I presume that's going to be used as a basis for the testimony later.

Mr. Fenton: That is correct, Your Honor. Plaintiff next offers into evidence what has been marked as Exhibit 205, and this is a copy of the printout which was furnished to plaintiff's attorneys by T.I.M.E.-DC on August 12th, 1971, at the request of the plaintiff's attorneys, and this printout shows the total earnings of city drivers and line drivers at T.I.M.E.-DC's terminals for the year 1969, but **[21]** excludes the earnings of all city drivers and line drivers who earned less than $3,000.00 during 1969.

Is that agreeable?

Mr. Schuler: It is agreeable.

Mr. Wells: If Your Honor please, we agree to the authenticity, but we object to it on the grounds that it, by Counsel's statement, excludes a large group of drivers. It's not really representative of the facts.

The Court: Well, I believe your objection probably goes to the weight or the credibility rather than its admissibility. It probably has some relevancy, so I'll overrule the objection and admit the exhibit into evidence. We will note your qualification.

(Plaintiffs' Exhibit 205 received into evidence by the Court as Plaintiff's Exhibit 205—Printout of earnings of city drivers and line drivers.)

Mr. Fenton: Plaintiff next offers into evidence Exhibit 206, and this is the partial personnel file of James L. Mince, a shop foreman at the Nashville facility of the company.

The Court: How do you spell that name?

Mr. Fenton: M-i-n-c-e.

Mr. Mince was deposed at Nashville and this is a partial personnel file on Mr. Mince.

The Court: All right.

[22] Mr. Schuler: No objection, Your Honor.

The Court: All right. It's admitted.

(Plaintiff's Exhibit 206 received into evidence by the Court as Plaintiff's Exhibit 206—Partial personnel file of the employee, James Mince.)

Mr. Fenton: Plaintiff next offers into evidence Exhibit 207. This is the employment application of Herman Reichert, a line driver for the company at the Denver terminal.

Mr. Wells: If your Honor please, with respect to Exhibits 206 and following, which are going to be excerpts from personnel files, may we reserve a possible objection as to relevancy? We hadn't seen those until yesterday, and I think they don't touch us, but I really want to study them to be sure.

The Court: Let's cut through some red tape here. You've got exhibit after exhibit listed in this pre-trial order. What ones do the defendants object to and we will get into those in detail. Otherwise, let's just admit all into evidence and get started here.

Do you know which ones you're going to object to at this time? In other words, otherwise I'll just admit everything. That was the purpose of the pre-trial order.

Mr. Schuler: Well, Your Honor, I think we will have some objections to a few of the exhibits.

[23] The Court: Well, it serves no useful purpose to have Counsel be required to stay here and just name all these exhibits when they are already in the record. That is, you know, we are just wasting time. It doesn't mean anything to me.

Mr. Schuler: I think these are new exhibits that plaintiff——

The Court: Not on the pre-trial order?

Mr. Fenton: They are all listed in the pre-trial order, Your Honor. They were not attached to any depositions, but they are all in the pre-trial order.

The Court: Well, what do you want to do, just sit here and read all this out?

Mr. Fenton: Your Honor, it would be acceptable to us to have them admitted en masse. There are just two others that we would like an oral stipulation from the defendants on. Other than that, we would like to just admit them, if that's acceptable.

The Court: I'll tell you, I'm going to admit every one of these exhibits into evidence and give the defendants a right to raise objections at a later time during the trial, and if they don't raise it, well, they are just admitted. You can reserve your objections until later. The record will show that each exhibit that has been listed on the pre-trial order has been tendered into evidence by the plaintiff. **[24]** I'm talking about the plaintiff's listed exhibits. They are admitted subject to the right of the defendants to bring up objection during the course of this trial, and I will rule on them at that time. If no objections are raised, these are in evidence.

Mr. Fenton: Thank you, Your Honor.

(All plaintiff's exhibits listed on pre-trial order were then received into evidence by the Court.)

Mr. Fenton: Now, turning to Plaintiff's Exhibit 232, this exhibit contains a copy of the printout which was furnished to plaintiff's attorneys by T.I.M.E.-DC on November 19th, 1971, at the request of plaintiff's attorneys, and this printout shows all of the casual employees who worked for T.I.M.E.-DC during the year 1970.

Now, in the front of Exhibit 232 separately tabbed is 1970 job code key, and a 1970-71 terminal city code key. The job code key contains job identifications for the job code numbers

used for the employees in Exhibit 232, and the terminal city code key contains city identifications for the city code numbers used for the employees in Exhibit 232.

Is that agreeable?

Mr. Schuler: That's agreeable.

The Court: All right. It's admitted.

Let me ask you right now, I don't think I've got it firmly in my mind what a casual employee is. Identify him or **[25]** describe him or——

Mr. Fenton: My understanding of a casual employee, Your Honor, is one who is not a full-time employee.

Mr. Schuler: Well, Your Honor, I think perhaps it is more than that. It is a person who works from time to time and as described in the contracts, he's not what you would call a part-time employee. He does not work five hours a week every week. He is someone who is called in as needed on a spot basis and ——

The Court: Five hours a week or it might be sixty.

Mr. Schuler: That's right. He might work one day a week. He might work one day in a year. He might work four days in a row.

The Court: He is just opposite from a regular employee?

Mr. Schuler: Yes, I think we would take that position.

Mr. Wells: If Your Honor please, if you would look at Exhibit 203(a), which is the collective bargaining agreement, the first one that is there, the National Freight Agreement, Page 17, there is a section with respect to probationary and casual employees, which answers Your Honor's question.

The Court: Page 7, Exhibit 203?

[26] Mr. Wells: Page 17, Exhibit 203, the first contract listed there.

Mr. Fenton: While we are on the subject of Plaintiff's Exhibit 203, I think this would be a good time to point out that the National Master Freight Agreement is a part of a number of the agreements which are contained within Exhibit 203. However, the National Master Freight Agreement itself has been reproduced only once in Exhibit 203(a), 203(b), 203(c) and 203(d). That is it at the very outset of Exhibit 203(a).

The Court: Let me have that exhibit here, if I might.

Mr. Fenton: And the omission in other agreements where it normally would appear is noted by an insert sheet which says——

The Court: Just refers back to this to save duplication.

Mr. Fenton: That's correct, Your Honor.

The Court: Good. All right, sir.

Mr. Fenton: We have just one more oral stipulation and that is with respect to Plaintiff's Exhibit 233. Now, with respect to Exhibit 233, the list of casual employees for the eight terminals of the company in Exhibit 233 were submitted to officials of the eight terminals at plaintiff's request, and the officials at these terminals directed that the **[27]** ethnic codes for these casuals be placed next to the names of the casuals to the extent that such information was available, also at plaintiff's request, and the ethnic code used on these lists are the standard ethnic codes used by the company, and that 00 means Caucasian, 01 means Negro, 02 Spanish surnamed American, 03 means American Indian and 04 means Oriental.

Is that agreeable, gentlemen?

Mr. Schuler: That's agreeable.

Mr. Fenton: Plaintiff will now call as its first witness Catherine McGinn.

(A number of witnesses were then sworn by the clerk.)

The Court: Who was the first witness?

Mr. Fenton: Mrs. Catherine McGinn.

The Court: Is the rule to be invoked, gentlemen, any necessity for that.

All right. Nobody sees any need for invoking the rule, I presume, so the witnesses will retire and may sit in the spectator section, or if you want to leave, well, Mr. Fenton will tell you who is next and I will leave him the responsibility of having you available, but you are not required to stay just in this courtroom, but don't go far because we want to hear your testimony promptly.

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[28] **CATHERINE McGINN,**

called as a witness at the instance of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Fenton

Q. Would you please state your name and present occupation. A. Catherine McGinn. I am a legal technician for the Civil Rights Division for the Department of Justice.

The Court: McGann?

A. (By the Witness) McGinn, M-c-G-i-n-n.

The Court: Thank you.

Q. (By Mr. Fenton) What is your residence, Miss McGinn? A. (By the Witness) My residence is 5433 North Twenty-Fourth Street, in Arlington, Virginia.

Q. What are the duties and responsibilities of your job as legal technician? A. I assist the attorneys in the investigation of employment cases. My main duty involves the analysis of records.

Q. What is your education, Miss McGinn? A. I have a Bachelor of Arts degree in sociology.

Q. I will now hand you what has been marked as Government's Exhibit 222. Are you familiar with this exhibit? A. Yes, I am.

Q. Did you prepare it? A. Yes, I did.

[29] Q. Would you explain what this exhibit contains? A. This exhibit contains copies of the 1970 United States census population report for the standard metropolitan statistical areas and cities which T.I.M.E.-DC has terminal locations. The cities in which T.I.M.E.-DC has terminals located are circled on the various pages.

Q. Did you copy these from official copies of census reports? A. Yes, I did.

Q. At the time you copied these, were such statistics available for places of less than ten thousand population? A. No, they were not.

Q. Do the census reports break the population down by race? A. Yes, they do.

Q. How is that done? A. Total count of all races, then they are broken down into divisions of white, Negro and other.

Q. I now hand you what has been marked as Plaintiff's Exhibit 223.

The Court: Let me be sure I am following her now. Let's look at Atlanta on that first page, total population, a million three hundred ninety thousand in round figures, is that correct? Of that, white was a million seventy-six thousand?

A. (By the witness) Right.

[30] The Court: Negro, three hundred ten thousand six hundred, and other, three thousand three hundred ninety-six.

A. (By the witness) That's correct, Your Honor.

The Court: Now, is that in the city limits of Atlanta or does it cover——

A. (By the witness) This is under the heading of standard metropolitan statistical area.

The Court: Does that mean——

A. (By the witness) That would be the Atlanta area, the city and the suburbs surrounding the area as determined by the census bureau.

The Court: Does it include in it the incorporated towns or is it unincorporated or is it county or what?

A. (By the witness) It is not definitely county. It may include some other incorporated area. The area is determined by the census bureau.

The Court: It is an area officially designated by the census bureau?

A. (By the witness) Yes.

The Court: Not necessarily limited to the city limits.

A. (By the witness) Definitely not, Your Honor.

The Court: Do you know on what basis they **[31]** designated these areas?

A. (By the witness) The explanation is on the first page. I also list the group, what they define as standard metropolitan statistical area.

The Court: I can read that. That's fine. That's what I needed to know. Thank you. Go ahead.

Q. (By Mr. Fenton) Now, referring to what has been marked as Plaintiff's Exhibit 223, Miss McGinn, are you familiar with this exhibit? A. (By the witness) Yes, I am.

Q. Did you prepare it? A. Yes, I did.

Q. Would you please explain to the Court what Exhibit 223 contains. A. It's a copy of the United States Census Subject Report, persons of Spanish surname, for the urban places at T.I.M.E.-DC terminal locations in five southwestern states, and I have selected pages which contain populations for urban places that T.I.M.E.-DC has a terminal located in five southwestern states which the report covers. And again, the cities in which T.I.M.E.-DC has terminal locations are marked by check marks within the exhibit.

Q. Did you place those check marks there? A. Yes, I did.

The Court: What does it show, now? You **[32]** got a total population in Phoenix, for instance, of forty thousand two forty-one.

A. (By the witness) Your Honor, this refers to only persons of Spanish surname, so that would be the total population of persons with Spanish surnames. Then, it's broken down into those that are native-born and those that are foreign-born.

The Court: Thank you.

Q. (By Mr. Fenton) Did you copy the contents of Exhibit 223 from an official publication of the United States Census Bureau? A. (By the witness) Yes, I did.

The Court: Based on 1960 census.

A. (By the witness) On the 1960 census, yes, Your Honor.

The Court: Thank you.

Q. (By Mr. Fenton) Now, I hand you what has been marked as Plaintiff's Exhibit 224. Are you familiar with this exhibit? A. (By the witness) Yes, I am.

Q. Did you prepare it? A. Yes, I did.

Q. Would you please explain to the Court what this exhibit contains. A. It is a copy of the 1960 United States Census Population Report, and copies of urban places at T.I.M.E.-DC

terminal locations in five southwestern states, and the terminal locations are marked by checks on the various pages. And this is the **[33]** total population for these areas.

Q. Did you copy the contents of this exhibit from an official publication of the United States Census Bureau? A. Yes, I did.

Q. I now hand you what has been marked as Plaintiff's Exhibit 225. Did you prepare this exhibit? A. Yes, I did.

Q. Will you please explain what it contains? A. It contains a chart showing the percent of white, Negro and other population in the SMSA and city at T.I.M.E.-DC's terminal locations and the percent of white, Negro and other work force at T.I.M.E.-DC terminals.

Q. Are your sources of the statistics given on the last page of the chart? A. Yes.

The Court: If you will pardon me for interrupting, but I am not as familiar with this case as the attorneys are.

Let's take Albany up there. There is white, 96.31 percent of the total population, is that correct?

A. (By the witness) That is correct, Your Honor.

The Court: T.I.M.E.-DC has 96.97 percent white employees.

A. (By the witness) At this particular location, yes, Your Honor. And then, the population statistics are broken into two **[34]** columns, and then the middle three columns are the population percentages for the city itself?

The Court: I see. First is the metropolitan area and the next is the city itself.

A. (By the witness) That's correct.

The Court: And the third group is the percentage of the employees.

A. (By the witness) Per location, that's correct, Your Honor.

The Court: All right.

Q. (By Mr. Fenton) Now, did you obtain the census figures which you used in preparing Exhibit 225 from Exhibit 222? A. (By the witness) Yes, I did.

Q. Did you obtain the T.I.M.E.-DC employment figures for preparing Exhibit 225 from Exhibit 204? A. Yes, I did.

The Court: Well, this is at 1970.

A. (By the witness) 1970 statistics, yes, Your Honor.

Q. (By Mr. Fenton) I now hand you what has been marked as Plaintiff's Exhibit 226. Did you prepare this exhibit? A. (By the witness) Yes, I did.

Q. Would you please explain what it shows? A. It is a chart showing the percent of Spanish surnamed population, urban places at T.I.M.E.-DC terminal locations in five southwestern states, and the Spanish surnamed work force **[35]** at the T.I.M.E.-DC location in these five states.

Q. Are the sources of your statistics which you used in preparing Exhibit 226 given underneath the figures on this chart? A. Yes, they are.

Q. Did you obtain the census figures from Plaintiff's Exhibits 225 and 224? A. That is correct, yes.

Q. Did you obtain the T.I.M.E.-DC employment figures from Plaintiff's Exhibit 204? A. Yes, I did.

The Court: For instance, on this, San Antonio, Spanish surnamed population forty-one percent and T.I.M.E. employed fifty-eight and eight tenths percent of the work force at the terminal have Spanish surnames.

A. (By the witness) Yes, Your Honor.

The Court: Now, what do you mean by work force you've got there, is that all employment or clerical——

A. (By the witness) All employees.

The Court: Dock?

A. (By the witness) At a location, yes.

The Court: All right.

Q. (By Mr. Fenton) Now, Miss McGinn, I refer you to what has been marked as Plaintiff's Exhibit 227. Are you familiar with this exhibit? **[36]** A. (By the witness) Yes, I am.

Q. Did you prepare the figures as percentages which are reflected in this chart? A. Yes, I did.

Q. Are the sources from which you obtained the information to prepare this chart listed on the chart itself? A. Yes, the source is listed at the bottom of the chart.

Q. And is the source which is set out as personnel list also Plaintiff's Exhibit 204? A. Yes, it is.

The Court: This is nationwide?

A. (By the witness) Yes.

The Court: Is that right? The green?

A. (By the witness) Yes, Your Honor.

The Court: Green is white, red, Negroes, and yellow, Spanish-American.

A. (By the witness) Yes, sir.

The Court: And blue is other, I guess.

A. (By the witness) Blue is the American Indian and the purple the oriental.

The Court: All right.

Q. (By Mr. Fenton) What does this chart show? A. (By the witness) It is a racial breakdown by percent in the various job categories of all T.I.M.E.-DC employeed.

Q. I now refer you to what has been marked as Plaintiff's [37] Exhibit 228. Are you familiar with this exhibit? A. Yes, I am.

Q. Did you prepare the figures and percentages which are reflected in this chart? A. Yes, I did.

Q. Are the sources from which you obtained your information to prepare these figures and percentages listed on the chart itself? A. Yes, which is the March 31, 1971 printout personnel list which is the Exhibit Number 204.

Q. What does this chart, which is Exhibit 228, show? A. It shows the new hires of T.I.M.E.-DC from July 2nd, 1965 to March 31, 1971.

Q. Excuse me. Would this chart include those persons who were hired between July 2nd, 1965 and March 31, 1971 who had resigned, or were otherwise terminated? A. No. Those persons would not be included in the count on the chart due to the fact that all persons included in this chart are listed on the 1971 personnel printout list that were then employed, so if they were hired after July 2nd and terminated before March 31, '71, they would not be shown.

Q. In other words, it would include those persons who were hired during that period who are still employed as of March 31, 1971? A. That's correct, still employed.

[38] The Court: Have you got one showing they are hired? You know, if somebody would quit, how are you going to charge that to the defendant in this case?

Mr. Fenton: Well, Your Honor, what we are showing with this chart, with the information we have available, are the hires.

The Court: The hires who were hired and stuck with the job?

Mr. Fenton: That's correct, Your Honor.

The Court: Now, you don't—you got a chart showing those that were hired and might have quit because they didn't like the

job, or got fired because they couldn't do it, or seems to me that the total hiring is a crucial matter here.

Mr. Fenton: If we had the information available to present that, Your Honor, we certainly would do so.

The Court: Well, all right. If you don't have it, you don't have it.

Mr. Fenton: We believe this gives a pretty good approximation of the hiring by ethnic categories.

The Court: I wasn't questioning the admissibility. I am just trying to get the distinction here.

Mr. Fenton: Right. We did want to explain that, that that would include those kind of people from the new hire category, those that had been hired and had [39] quit or had been terminated.

Q. (By Mr. Fenton) I now refer you to, Miss McGinn, what has been marked as Plaintiff's Exhibit 229. Are you familiar with this chart? A. (By the witness) Yes, I am.

Q. Did you prepare the figures and percentages which are reflected in this chart? A. Yes, I did.

Q. Are the sources from which you obtained your information to prepare these figures and percentages listed on the chart? A. Yes. They are the 1970 U. S. Census Report, which are Plaintiff's Exhibits Number 222 and March 31, 1971 printout personnel list which is Exhibit Number 204.

Q. What does this chart show? A. It shows a percentage of Negroes employed at T.I.M.E.-DC terminals compared with the percentage of Negro population in terminal cities. The red denotes the Negroes employed at the T.I.M.E.-DC terminals, bule coloring denotes the Negro population.

The Court: That is a duplication of a previous exhibit. It's just put in chart form.

A. (By the witness) That's correct, Your Honor.

The Court: All right. Hold up just a minute here. That is based on what exhibit?

A. (By the witness) It was based on Exhibit Number 225.

The Court: Well, now hold that there a **[40]** minute. Now, this is on the Negroes.

A. (By the witness) That's correct, Your Honor.

The Court: Whereas, Albany being the first one——

A. (By the witness) It would be the first column. You can see it.

The Court: The blue is what?

A. (By the witness) Is a percentage of black population in the terminal cities. You can see there are no black employees. However, there are twelve——

The Court: I got 3.28 percent here the way I read this chart.

A. (By the witness) Your Honor, that is——

The Court: No, no, wait a minute. Excuse me. Let's get another one here. Let's go to Atlanta. Atlanta has thirteen percent employed. That would be the—and the blue is what?

A. (By the witness) Is the city population. Just 51.3, and here are the numbers to put it in perspective, the numbers of employees at each of the terminals and obviously——

The Court: So the red—that chart there shows that T.I.M.E. has thirteen percent Negroes employed while the city has a fifty-one percent population.

A. (By the witness) Population and the total numbers of **[41]** employees at this terminal at that time was a hundred and sixty-seven——

The Court: That's all of the races, a hundred and sixty-seven.

A. (By the witness) That's correct, Your Honor.

The Court: All right. Thank you.

What was the date, as of what date on Exhibit 229?

A. (By the witness) The 1970 census and the T.I.M.E.-DC employees would be as of March 31, 1971. They are also based on Exhibit 204.

The Court: All right.

Q. (By Mr. Fenton) Miss McGinn, I now hand you what has been marked as Plaintiff's Exhibit 230. Did you prepare the materials in this exhibit? A. (By the witness) Yes, I did.

Q. Is the methodology that you used in preparing the exhibit set forth on the first page of the exhibit? A. Yes, it is.

Q. Is the source that you used for the pay rates also set forth on the first page? A. Yes, it is. It is the March 31, 1971 printout personnel list.

Q. That source is Plaintiff's Exhibit—— A. Exhibit 204.

Q. I now hand you what has been marked as Plaintiff's **[42]** Exhibit 231. Did you prepare the material in this exhibit? A. Yes, I did.

Q. Are those your initials and the dates that you prepared it in the corner of the exhibit? A. Yes, it is.

Q. What does this exhibit show? A. This exhibit shows the average earnings of city drivers and road drivers in ten terminal cities of T.I.M.E.-DC, and the last column reflects the difference in the earnings of the city road drivers—city and road drivers at these terminals.

Q. Did you obtain the earnings for the drivers from Plaintiff's Exhibit 205? A. Yes, I did.

Mr. Fenton: At this time, Your Honor, if I could refer back to Plaintiff's Exhibit 205 for a moment.

The Court: All right, sir.

Mr. Fenton: The terminals in that exhibit are identified by number only, and the company has subsequently furnished us with a code which identifies the cities that those numbers stand for, and with the permission of the Court and the parties, I would like to insert this identifying code and call it Exhibit 205(a).

The Court: All right. There being no objection, it's admitted to 205(a). In other words, that is needed for this witness to translate the printouts to some of **[43]** the exhibits she's prepared. I presume that is the purpose of it, is it not?

Mr. Fenton: Correct, Your Honor.

The Court: All right.

But in preparing the exhibit you gave the city rather than the code number.

A. (By the witness) That's correct, Your Honor.

(Plaintiff's Exhibit 205(a) received into evidence by the Court as Plaintiff's Exhibit 205(a)—An identifying code for cities where T.I.M.E.-DC has terminals.)

Q. (By Mr. Fenton) Miss McGinn, I now hand you what has been marked as Plaintiff's Exhibit 233. Are you familiar with this exhibit? A. (By the witness) Yes, I am.

Q. Did you take the names of the casual employees in this exhibit, their job codes and their employment dates from the printout which has been marked Plaintiff's Exhibit 232? A. Yes, I did.

Q. And you did this for each of the eight terminals which are included in Exhibit 233? A. That is correct.

Q. Now, in the back of this exhibit, do you see certain typewritten summaries? A. Yes, I do.

Q. Did you prepare these summaries? **[44]** A. Yes, I did.

Q. Did you obtain the information from these summaries from the casual lists which are in the front part of the summaries in Exhibit 233? A. That is correct.

Q. I now hand you what has been marked as Plaintiff's Exhibit 234. Did you prepare this exhibit? A. Yes, I did.

Q. How did you determine the black and Spanish surnamed supervisors and salesmen at T.I.M.E.-DC as of March 31, 1971? A. This is based on the March 31, 1971 printout, and the personnel are racially coded by the company printout.

Q. You took that from Exhibit 204? A. That is correct, yes.

Q. Does the list on the front page of Exhibit 234 contain the names of all the black and Spanish surnamed American supervisors and salesmen which are listed in Exhibit 234? A. That is correct, yes.

Mr. Fenton: That's all the questions I have.

The Court: All right. Just hold up just a minute here. To be sure I understand this, Miss McGinn, let's take Mr. Littlejohn, Number I there, you've got him as a minority. Where do you find that on the file itself?

[45] A. (By the witness) The race may not be reflected on the file, however, based on Exhibit Number 204, Mr. Littejohn's name is race coded as a black.

The Court: This is not just Spanish surnamed, this is black.

A. (By the witness) Minority.

The Court: That answers my question. Thank you. All right. Who will go next. Let's go to counsel for T.I.M.E. first.

Cross-Examination,

By Mr. Schuler

Q. Miss McGinn, I'd like to ask you initially some questions about Exhibit 234. I believe you indicated that you had some information about Mr. Littlejohn in Tab I. As I look at that, I see information about Alfonso Lambert. Would you check your copy and tell me what you see there. A. This copy is correct, under I it is.

Q. Yes. I have noticed—well, let me ask this question: Is the proper way to get at these to lift the tab and then the documents appear about the tab?

The Court: Below it.

A. (By the witness) Below it.

Q. (By Mr. Schuler) Well, below I, I find Alfonso Lambert and——

The Court: My copy I find R. O. Littlejohn.

[46] A. (By the witness) May I see yours?

Q. (By Mr. Schuler) I'd like you to take just a moment and maybe—— A. (By the witness) I will straighten it out for you.

Q. Maybe you can straighten it out for me. A. Okay. Somebody changed them.

Q. Are all of the personnel records that you referred to in the copy that I have? A. Yes. They are just out of order, but I can fix it for you.

Q. All right. Thank you.

Thank you. Now, can you tell me how you went about determining which documents would be taken from the personnel files of each individual? A. I used documents to show at which time they came into the supervisory or salesman position. It may be a change of status sheet. In some cases only the single sheet to show the date at which they came into that position.

Q. And are all the documents designed solely to show the changes or progression of these individuals from one category to another? A. It is basically designed to show the time at which they came into the supervisory or salesman position.

Q. All right. Thank you.

Now, I'd like to talk a little bit about your Exhibit **[47]** 225 and your Exhibit 229. Do you have those copies before you? I will show you the exhibit.

The Court: 229?

Mr. Schuler: Yes.

A. (By the witness) Yes, it's on the desk.

The Court: I don't believe I've got that up here, have I?

Mr. Schuler: That is a chart.

A. (By the witness) There are some more copies.

The Court: That is the chart. It would be helpful to me if we could have it propped up there so we can follow the questioning.

All right. Thank you, sir.

Q. (By Mr. Schuler) Now, later on I will want to ask you some questions about the meaning of SMSA, and Urban Place, but for the moment I want to look at this chart with you.

Under Atlanta you show that the percentage of Negroes in the total population is 51.3 percent, do you not? A. (By the witness) That is correct.

Q. And by reference back to your Exhibit 225, you show that in the SMSA area, that is the region around Atlanta, the percentage of Negroes is 22.35, do you not? A. That is correct.

Q. Now, that is not shown on this chart at all, is it? A. No, it's not. As the title says, it is the population **[48]** of the cities.

Q. All right. Now, do you know or did you study whether the terminals of T.I.M.E.-DC are located in the cities in all of these cases? A. No, I did not.

Q. For example, let's take York, Pennsylvania. Do you know where the terminal of T.I.M.E.-DC is located? A. No, I do not.

The Court: Your question is whether it is in the city limits or in the metropolitan area outside the limits.

Mr. Schuler: Yes, right.

Q. (By Mr. Schuler) If we were to go through and list a comparison of T.I.M.E.-DC Negro employees with the population of Negroes in the SMSA area, you would agree with me, would you not, that the blue lines would be substantially shorter in every case.

Mr. Fenton: Your Honor, I object to the form of the question on the grounds that the terms of the statute are not clear.

The Court: Why don't you just prepare a chart showing that for me and we don't have to worry about those terms. I think it's very pertinent.

You know what substantial means, don't you?

A. (By the witness) Yes, sir, I know.

[49] The Court: I will overrule.

Mr. Fenton: I will withdraw the objection, Your Honor.

Q. (By Mr. Schuler) Would you agree with me that there is substantial difference? A. (By the witness) There would be a difference.

The Court: Just for the record here, let's just take Atlanta, what you're talking about—yes, take Atlanta, this blue line, instead of being—what is it on Atlanta, fifty-one percent——

Mr. Schuler: 51.3.

A. (By the witness) 51.3 percent.

Mr. Schuler: In the SMSA area that would be 22.35.

The Court: More than half less. I presume Counsel will bring in some testimony showing where they employed these people, otherwise, this exhibit won't be very helpful to me.

Q. (By Mr. Schuler) Was the decision to show only the comparison between Negroes employed by T.I.M.E.-DC and Negroes in the city rather than showing the comparison between Negroes employed by T.I.M.E.-DC and Negroes living in the SMSA area determined by you, or were you simply making the chart? A. (By the witness) The decision was made by the supervising attorneys on the case.

[50] Q. I see.

The Court: The exhibits that have been furnished to me up here, they are not the exhibits for the trial, they are for my use where I can write on them?

Mr. Fenton: That's correct, Your Honor.

The Court: All right. Thank you.

Q. (By Mr. Schuler) Miss McGinn, did you make any studies to determine if all Negroes in all cities where T.I.M.E.-DC has terminals live within the city limits? A. (By the witness) No, I did not.

Q. I see. Did you make any study to determine if within the city or within what is referred to as the SMSA area there is any particular part of that area that has a higher percentage of minority persons living than in some other area of the city? A. No, I did not. I just used the basic census figure for that particular figure and SMSA.

Q. Do you have any opinion as to whether in most of the cities, as shown on Exhibit 225, there would likely be some areas of the city that would have a higher percentage of minority persons than other parts of the city? A. There may be —I wouldn't—I did not study it, so I wouldn't know.

Q. And did you make any study to determine how far from the terminal of T.I.M.E.-DC any particular minority person might live; do you have any statistics there? **[51]** A. No, I did not make that study.

Q. Did you make a study to determine what available means of transportation there might be for minority persons, or other persons, to use in getting to the terminals of T.I.M.E.-DC? A. No. I made no such study of transportation.

Q. Did you make any study to show the average distance from the terminal that any group of minority persons lives in any particular terminal city of T.I.M.E.-DC? A. No, I did not make that study.

Q. Now, on your Exhibit 222, you have figures from the United States census that talk in terms of the standard metropolitan statistical area. I'd like to ask you as to Albany, New York, which is the first one listed, what areas besides the city limits of Albany are included in the standard metropolitan statistical area of Albany? A. I don't know the names of the exact areas or the suburbs. I simply used the area used by the Census Bureau in their statistics.

Q. Let's go to the second sheet there. Can you tell me what incorporated or unincorporated areas beyond the city limits of Atlanta are included in the standard metropolitan statistical area of Atlanta?

Would your answer be the same?

A. The answer would be the same because I didn't look into the various unincorporated or incorporated areas within that **[52]** particular area. I wanted a number for the population within the city and within the outlying areas, and the basic figures used by the Census Bureau in the one vein were the standard metropolitan statistical area, therefore, that is why I utilized that figure.

Q. To the best of your knowledge, does the standard metropolitan statistical area vary from town to town? A. The area that is encompassed by it?

Q. Yes. Would there be perhaps in Atlanta a whole county or two counties around Atlanta included in the standard metropolitan statistical area, whereas in another point, such as Albany, New York, there might possibly be two cities that are suburbs around Albany being included, plus perhaps unincorporated areas but embracing less than a county? A. That would be possible.

Q. Would this be possible? A. That would be possible, that is correct.

Q. From this exhibit or these series of exhibits, I take it there is no way that we can tell just what specifically is included beyond the city limits itself in the standard metropolitan statistical area of any city. Wouldn't that be correct. A. As far as location or the geographical——

Q. Yes. We can't tell what additional territory is taken in, can we? **[53]** A. Yes, that's correct.

Q. All right. Now, from your various exhibits that show standard metropolitan areas and urban areas and so on, is there any way by looking at the racial figures that show white, Negro and other than we can tell the average——

Well, strike that.

Let me ask you about another term. You have listed standard metropolitan statistical areas, and in some of the exhibits there is a reference to an Urban Place. Can you tell me what an Urban Place means? A. I believe the explanation is on the pages, introductory pages to these exhibits. They are all in reference to the percent of Spanish surnamed population.

The reason I used urban places for the measurements of the population is that that is what was available in the 1960 sta-

tistics, and it was the term used in the 1963 report on the Spanish surnamed Americans.

Q. Can you tell me what, from your own knowledge, the difference between the definition of urban place, with regard to the Spanish-American exhibits, as opposed to the terminology Spanish metropolitan statistical area, or what is it? A. That's correct.

Q. That terminology is referring to some of the other exhibits? A. I am really not sure what the difference would be in [54] geographic location that would be encompassed for these particular exhibits.

Now, to draw the figures for the Spanish surnamed Americans, I made the selection of urban places rather than going to the counties simply because more of the terminal cities were available under the heading of urban places.

Q. Does the urban place in some cases take in more area than the city limits of the major cities that are identified? A. It may.

Q. Would it in some cases take in less than the city limits of some of the major cities that are listed? A. I am really not positive.

Q. Would it in some cases take in as much area as an entire county surrounding a city that is listed? A. I am not sure. There is a separate heading, though, for the counties, so it would involve a comparison of the county in which those cities are located to the figures for the counties.

Q. Have you made any summarization to show the number of minority persons, both male and female, who are of working age who are living somewhere in the SMSA, or city region around the various terminals of T.I.M.E.-DC? A. Have I done those summarizations?

Q. Yes. A. Yes, I did——

[55] Mr. Fenton: Counsel, could we have a clarification of what you mean by working age?

The Court: Yes, what ages are you—well, if she's done so, ask her what age she has made the study on.

Q. (By Mr. Schuler) Well, have you made a study of minority persons by age at any of the terminal cities of T.I.M.E.-DC? A. (By the witness) Yes, I did.

Q. And is that included in any of the exhibits that you have identified? A. No. The study is not included in these exhibits.

Q. I see. Do you know if this intended to be identified as an exhibit at the trial?

Mr. Fenton: Your Honor, if I may, Miss McGinn has prepared such exhibits within the last week and we certainly have no objection to offering them in at this time if Counsel for the company has no objection. They are in the next room.

The Court: All right. If Counsel wants to ask for them, well, the government agrees to furnish them, so if you make your request, for the record, you can have them.

Mr. Schuler: Could I inquire of Counsel whether these were prepared for the purpose of rebuttal?

Mr. Fenton: That's correct.

[56] Mr. Schuler: Your Honor, I would object to any such exhibits because as a matter——

The Court: Counsel, you brought it up.

Mr. Schuler: Well, Your Honor, I want to find out if this witness has prepared these on the direct case.

The Court: Now, she says she has. Do you want to see them now or not?

Mr. Schuler: She says she has not prepared them for the direct case, and Counsel has indicated that they are for rebuttal.

The Court: Well, you object to them when he offers them. Now is not the time. I don't want to rule on that now. The only question now is do you want to see them, or do you want to go on to something else.

Mr. Schuler: Well, I am going to go on to something else, Your Honor.

The Court: Let's go ahead.

As to whether they are admissible later, I'm going to rule on that when the time comes.

Mr. Schuler: All right. Why don't we take a brief recess. Let's stand in recess until 11:45.

(Recess.)

The Court: All right. Miss McGinn, if you will take the stand again, please.

Mr. Schuler: Your Honor, in the recess I **[57]** asked Counsel for the plaintiff to identify this study by age of minority persons, and I would like—he has agreed and I would like him to go ahead with that now.

The Court: All right, sir.

Mr. Fenton: Your Honor, we will offer this exhibit, which was prepared by Miss McGinn, in evidence as Government's Exhibit 241.

The Court: All right. There is no objection. It's admitted.

(Plaintiff's Exhibit 241 received into evidence by the Court as Plaintiff's Exhibit 241—Study by age of minority persons.)

Q. (By Mr. Schuler) Miss McGinn, I'd like to ask you some questions about what has just been marked as Exhibit 241.

Can you tell me if the figures on the first page take in both male and female? A. (By the witness) Yes, they do.

Q. I see. And in looking on the first page of the exhibit, that is actually taken from a census, and it deals with, I believe, Albany, New York, and it has figures for 1960——

The Court: For 1970.

Q. (By Mr. Schuler) Or for 1970 under Albany, which I believe was the first figure you took, and I believe it shows an X to indicate that. A. (By the witness) Yes, that's right.

[58] Q. To indicate that you took those figures. Am I reading the figures correctly when it shows Negroes of all ages, that there are eleven thousand three hundred fourteen males and twelve thousand three hundred thirty-eight females in the Albany-Schenectady-Troy SMSA? A. That is correct.

Q. And that means the females outnumber the males in that particular area, doesn't it? A. That's correct, yes.

Q. Now, did you acquire the figures for your exhibit by going down those columns and taking not only all the males between twenty and sixty-four, but all the females between twenty and sixty-four? A. Yes, that's correct.

Q. Did you make the determination yourself that all the females as well as all the males from the Negro community would be seeking jobs at T.I.M.E.-DC, or other places?

Mr. Fenton: Your Honor, I object to the question because I don't believe the proper predicate has been laid for that.

Mr. Schuler: I am just asking who, if she made the determination or someone else did.

Mr. Fenton: Your Honor, I don't believe it's been established that all females as well as all males would be seeking jobs at T.I.M.E.-DC.

[59] The Court: Well, I think this is Counsel's point exactly.

Mr. Schuler: That's my point, Mr. Fenton.

Mr. Fenton: Very well.

The Court: I will permit her to answer the question as to who made the decision.

Q. (By Mr. Schuler) Can you tell us whether you made that decision to include all females as well as all males in this study? A. (By the witness) It was made by my supervising attorney.

Q. All right.

The Court: Now, what you're saying is that you, for the purposes of this exhibit that just came in, 241, that this shows that it would imply that the blacks of both sexes of these ages would be eligible for the work force. This doesn't say whether they are eligible for the type of job to be performed at T.I.M.E., does it?

A. (By the witness) I just used all those eligible for the work force, yes.

The Court: To work for whom?

A. (By the witness) For T.I.M.E.-DC.

The Court: You are assuming——

A. (By the witness) I am assuming that the women would be capable of——

The Court: Of driving the trucks and **[60]** doing the mechanical work?

A. (By the witness) Yes.

The Court: We certainly don't have any predicate for that, do we?

Mr. Fenton: Well, I believe Title 7 covers sex discrimination, as well as on the basis of sex. If women are qualified to be truck drivers, they certainly should be hired.

The Court: Okay.

Q. (By Mr. Schuler) Miss McGinn, I'd like to just take a couple of more of these if you would go on down through your

Exhibit 241. Let's find Atlanta. I believe the page number is 12-72. A. (By the witness) Yes, that's correct.

Q. Now, again, am I reading correctly that the total number of Negro males of all ages is a little over a hundred and forty-four thousand and the total number of female Negroes in 1970 in Atlanta SMSA is a little over a hundred and sixty thousand? A. That is correct, yes.

Q. So in the Atlanta area as well as in Albany, the females, at least in the Negro population, outnumber the males, don't they? A. Yes, they do.

Q. Now, have you gone down through here to see whether or **[61]** not that is true in all the terminal cities; that is, that the females, in the Negro population at least, outnumber the males? A. No, I didn't do that because I assume they would both equally have the opportunity for employment.

Q. As you made these studies, Miss McGinn, you say you assumed that they would have equal opportunity for employment, males and females. Did you then exercise independent judgment as to what went into each of these exhibits? A. No.

Q. Based on what you thought the issues in the case were? A. Oh, no, not at all. Anything I did was under the direction of the supervising attorneys for the case. They made the decisions.

Q. I see. To save just a little bit of time, Miss McGinn, I have taken a look at the figures for Baltimore, Boston, Buffalo, Chattanooga and Chicago, and in every case I find that the figures for Negro females in those cities outnumber the figures for Negro males. Would you agree with my analogy of that? A. Yes, I would.

Q. All right. All right. Now, I want to take a look at a couple of the charts that you have sponsored. Let's take a look at Number 228. If we wanted to get a representative picture of how many minorities of all groups there are in each of these

job categories, wouldn't we have to take all the **[62]** separate little red and yellow and blue things that you have together and pile them on top of one another? A. Oh——

Q. You have separated them out and that makes them look smaller in comparison to the total, doesn't it? A. But the total would also be larger.

Q. How would—— A. See what I mean by taking them out?

The Court: I think she answered it. The answer to the question is obvious there, Counsel.

Q. (By Mr. Schuler) You would agree with that, wouldn't you, if we wanted to determine the total number of minorities, we would have to list all of them in the same bar. A. (By the witness) In a single column.

Q. Vertical column. A. Yes, that's correct.

Q. That same thing would be true as to your Exhibit 227, wouldn't it? We would have to take the red and yellow and blue columns and pile them one on top of another to get a clearer bar representation of the relationship between white and minority employees, wouldn't we? A. Are you speaking of all the categories?

Q. Yes, in each category. A. But there is a total column on there.

Q. But there again, in the total column, in order to show **[63]** the relationship between the white employees on one hand and all the minority employees on the other hand, we would have to pile these little bars on top of each other, wouldn't we? A. Yes, sir.

The Court: Counsel, what you're saying is the difference between the green bar and a hundred percent.

A. (By the witness) The same exactly if you're going to group the minorities.

Mr. Schuler: Yes.

The Court: Well——

Q. (By Mr. Schuler) In your Exhibit 226, can you tell me whether or not the purpose of the exhibit was to show the relationship between the Spanish surnamed persons employed at the terminals at selected terminals at T.I.M.E.-DC in comparison to the percent of Spanish surnamed Americans who live in what is called urban places at those same locations? A. (By the witness) That is correct.

Q. And just to simplify it, would you agree with me that in six of the fourteen terminal locations the percentage of Spanish surnamed Americans employed by T.I.M.E.-DC is greater than the percentage of Spanish surnamed Americans who reside in those urban places. A. That is correct.

Q. All right. On Exhibit 231, the note at the bottom indicates that the earnings of those drivers making less than **[64]** three thousand a year has not been included in the study of the earnings of the city and road drivers for 1969.

Can you tell me how many drivers there were who made less than $3,000.00 a year? A. No, I didn't calculate that. I really wouldn't know.

The Court: Does that include casual employees?

A. (By the witness) If the casual employees made more than $3,000.00, it would.

The Court: Well, okay. Somebody might have worked four months and made $3500.00, and they would be in the average up there.

A. (By the Witness) Yes, that's correct, Your Honor.

The Court: Those are not full-time employees.

A. (By the witness) Well, that would be correct, because it would be all those that made earnings over three thousand during '69.

The Court: It doesn't take into consideration the amount of time they worked is what I'm getting at. Somebody might have worked twelve months, somebody might have worked six months and still be in these figures.

A. (By the witness) That may be, yes. I wouldn't be sure.

The Court: Are there more casuals in the city drivers or the road drivers?

[65] A. (By the witness) I have no idea, Your Honor.

The Court: Well, were there more under three thousand in the city drivers or in the road drivers, or did you make—You just eliminated them all.

Do you know whether there were more in the city driver classification?

A. (By the witness) I have no idea of the number of the individuals that would——

Mr. Fenton: Your Honor, if I may, the exclusion was made by the company itself.

The Court: Well, I wasn't criticizing. I was just wondering what the facts were.

Mr. Fenton: The plaintiff has no idea of how many earned under three thousand, but the company may have this information.

The Court: Again, I'm not criticizing this witness' tabulation. I'm just trying to understand it, that's all.

While Counsel is conferring with his other Counsel, let me ask you a question.

Now, all of these figures are based—well, let me say, you have made no study about the qualifications for any of the classifications to hold a particular job, you are just taking the——

A. (By the witness) That's correct, Your Honor.

[66] The Court: It would assume that there was as many qualified in an ethnic group.

A. (By the witness) Yes, sir.

The Court: Do you know if there is any study along that line which has been made?

A. (By the witness) I wouldn't know that, Your Honor.

The Court: I thought it might have been made in connection with the new hires study that is shown on one of those exhibits there, but if you don't know about it——

A. (By the witness) That, Your Honor, was simply taken from the printout, simply as some of the individuals that have been hired.

The Court: Total statistics rather than the underlying factors.

A. (By the witness) Simply a count of those that were hired.

The Court: All right.

A. (By the witness) Those employed.

Q. (By Mr. Schuler) Miss McGinn, I think this would be obvious, but as to Exhibit 241, the new exhibit you have sponsored, would it be true that the exhibit does not show where in the city or SMSA area the terminals of T.I.M.E.-D.C. are located, or where the predominate portion of minority populations are located? A. (By the witness) That's true. The exhibit doesn't **[67]** show that.

Q. You have made no study of that with relation to Exhibit 241, have you? A. 241, that's correct.

Q. All right. On your Exhibit 224, is there any way of telling whether, or how many Spanish surnamed persons there are between eighteen and sixty-four, or twenty and sixty-four years of age who would be available to work theoretically in the work force? A. Not that I know of.

Q. Is that also true of your Exhibit 223, which I believe also relates to Spanish surnamed persons in the five southwestern states? A. Now, your question is are the figures here available for the work force, meaning again the persons twenty to sixty-four years of age, assuming that is the work force?

Q. Yes. Can we tell from that how many Spanish surnamed persons there are between the ages of twenty and sixty-four? A. Between those ages, no.

Q. Now, can you tell me on what basis you decide that persons between twenty and sixty-four are persons who can be regarded as being in the work force? A. I didn't make the decision. The supervising attorneys in the case did.

Q. As to your Exhibit Number 230, I'd like you to turn to **[68]** the first page as to Atlanta, if you will.

The Court: Exhibit 230?

Mr. Schuler: Yes.

Q. (By Mr. Schuler) The first seven job categories there appear to be supervisory employees, and the remaining persons appear to be hourly rated employees. Is that generally your understanding of those job classifications? A. (By the witness) That is correct, yes.

Q. Now, in considering the rate of pay per hour of the hourly rated employees, you didn't consider the amount of overtime that any of them might have worked, did you? A. No, I did not. I used the base rate from the printout from the company.

The Court: The base rates?

A. (By the witness) I shouldn't say base rates. The rates for the individual per hour or biweekly as presented on Exhibit 204.

The Court: Well, that would not include overtime.

A. (By the witness) I said it would not.

The Court: I'm sorry. I thought you said you didn't make any separation. I misunderstood your answer.

Q. (By Mr. Schuler) And did you make any study as to the average number of hours overtime work that any hourly rated employee in any of these categories actually worked for any **[69]** representative period of time? A. (By the witness) No, I did not. I used the amounts available on the printout.

Q. So there is no way we can tell from this exhibit how much total earnings an hourly rated employee actually made when we would consider overtime work and the amount of pay he received for the overtime work, is there? A. No. Assuming he did overtime work, that wouldn't be included.

Q. Now, similarly, for the supervisors, how did you determine the rate of pay per hour? A. Oh, for the explanation, it is on the last paragraph.

Q. All right. Let's turn to that. A. And what I did on the instructions of the attorneys is assume that a forty hour week was worked, eight hours a day for five days a week, and based on that, I calculated the average amounts.

Q. And you assumed, also, that they were paid at the end of each two-week period? A. That's correct.

Q. Is that true?

Did you make any inquiry from officials of the company as to whether these individuals were paid at the end of each two weeks or whether they were in fact paid twice a month? A. Two weeks or twice a month?

[70] Q. Yes. Did you make any inquiry from company officials to determine on which—— A. I personally did not. This was at the instructions of the supervising attorneys again.

Q. Would you agree with me that if a supervisor were paid twice a month that he would have worked something in excess

of eighty hours for each time that he was paid, assuming he worked eight hours a day? A. Yes, he could.

Q. Would it sound like a fair figure to you that the supervisor would end up working actually eighty-eight hours for each pay period if he were paid twice a month rather than paid every two weeks? A. That would be possible, yes.

Q. And if later testimony and evidence should show that supervisors are paid twice a month rather than every two weeks, would you agree with me that the figures you have shown here would be somewhat in error and would actually be shown to be higher than the actual case would be? A. Yes, that would be possible.

Q. Now, did you make any study or acquire any information as to how much overtime is, in fact, performed by any class or all classes of supervisory employees? A. No, I did not.

Q. Did you make any study to determine whether or not [71] supervisory employees are paid for overtime? A. No, I did not.

Mr. Schuler: May I have just one moment, Your Honor?

The Court: Yes, sir.

Mr. Schuler: Your Honor, I have no further questions. Thank you.

Mr. Wells: If Your Honor please, I have one or two.

The Court: All right, sir.

Cross-Examination

By Mr. Wells

Q. To your knowledge, are there any statistical data available from census, or the Bureau of Labor statistics, or the Department of Transportation, or elsewhere, as to the available qualified work force for any job category employed by T.I.M.E.-

DC? A. I personally didn't do—Now, would you please repeat that question and let me get it.

(The immediate preceding question was then read to the witness by the reporter.)

A. (By the witness) No.

Q. (By Mr. Wells) For example, are you aware of the fact that the Department of Transportation regulations require that a truckdriver, ICC qualified—or Department of Transportation [72] qualified, must be at least twenty-one years old and that he must have passed a written examination and that he must have passed a physical examination? A. (By the witness) Yes.

Q. Do any of your data take into account those necessary government qualifications with respect to over-the-road drivers, any of the charts that you have put in evidence? A. No, they don't take those particular matters into consideration. And it is——

Q. Or do they take into account any qualifications whether imposed by the government, by their employer, or by custom in the industry? A. I simply used the basic statistics, so I didn't account for any available——

Q. Without regard to qualification? A. Well, the majority of my statistics are looking at the company as a whole. I wouldn't really be looking into a particular over-the-road category or a dock category or a clerical category.

Q. Well, I believe that some of your exhibits here, for example, compare at least take-home pay of city and road people. As I recall, one of the exhibits is here. A. Yes.

Q. I take it that that exhibit and any others that you have identified, or you have prepared, have been identified and [73] prepared without any regard for what are either the governmentally required or employer required or custom in the in-

dustry required job qualifications? A. I did not take the job qualifications into account.

Q. With respect to your data on take-home pay, did you take into account the hours worked? A. Again, you're referring to if they were worked overtime?

Q. City versus road. A. No. That material or the basic material for the information was not furnished to me, and again, the decision was made by the attorneys.

Mr. Wells: I believe that's all. Thank you very much.

The Court: All right. Mr. Fenton?

Redirect Examination

By Mr. Fenton

Q. Miss McGinn, do you have Plaintiff's Exhibit 226 before you? A. Yes, I do.

Q. Does this exhibit show the different kinds of jobs that the Spanish surnamed American employees at the terminals actually held? A. No, it does not.

Mr. Fenton: That's all I have.

[74] The Court: Anything?

Mr. Wells: If Your Honor please, I have one I forgot.

The Court: Yes, sir.

Recross-Examination

By Mr. Wells

Q. Miss McGinn, I take it for the better part of a year you have spent a good bit of time examining either original or Xeroxed copies of this company's records, have you not? A. That's correct, sir.

Q. Including a large number of job applications? A. Of applications, yes, sir.

Q. Are you aware of any job application made by a female for the position of truckdriver, dock personnel or mechanic? A. I cannot recall any, but I couldn't—I have not looked at all applications. The most that I looked at were already employed by the company, so that would immediately eliminate it as to open application.

Q. I take it you are not in a position to advise this Court that any female made an application for any of the jobs in the classifications set out in my last question. A. I would have no way of knowing.

Mr. Wells: Thank you.

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[76] Mr. Schuler: Your Honor, I wonder if this might be an appropriate point for us to indicate some objections to the statistical exhibits. I don't know if there will be more later, but I do have some objections I would like to voice.

The Court: Well, we have got the witness walking in. I'll give you a chance later.

Mr. Schuler: All right. Thank you.

The Court: Unless it pertains to the testimony of this witness. Does it, Mr. Fenton?

Mr. Schuler: Well, my objection would go primarily to the exhibits, and as a correlary to it, perhaps it would effect the admissibility of that witness' testimony.

The Court: All right. Let's hear your objection now, then.

Mr. Schuler: There are a number of these exhibits, Your Honor, that I think have not been properly supported by facts, and there are variables that are too numerous to make them worthy of being accepted by the Court. I would cite as a legal authority for that, U.S. versus Ironworkers Local 86 at Three FEP cases, 496, 1971 case, where the Court said that the use of statistics is conditioned by existence of proper supportive facts, and absence of [77] variables which would undermine the reasonableness of the inference of discrimination which is drawn. And I think as to the figures that deal with the—that are used as a basis, the SMSA area around a city, we have not had any support to show how far around the city the area exists that is part of the SMSA. Miss McGinn indicated she doesn't know whether it is a county or a city or an unincorporated area or what in any particular area.

The Court: Well, now, she did state it was taken from the records of the Census Bureau, however they do the classification. She didn't know how they did it, but whatever their classification was, she used, is that correct?

Mr. Schuler: That's correct, Your Honor. And we don't have a basis used by the Census Bureau before us on this record.

Secondly, as to the figures that were based upon the census figures within the city, Miss McGinn was unable to indicate any study that had been made to show whether minority persons in fact lived within the city or outside of the city limits. Again, I don't believe we have proper supportive facts to justify the use of a raw census statement as to population.

As to similar exhibits having to do with Spanish surnamed persons, there was a use of a term called urban places, and again Miss McGinn indicated that there is not present in the courtroom anything to show specifically what an urban place [78] is surrounding any one of these towns, nor did she know

of her own knowledge what places are included within the definition of an urban place.

The Court: Wasn't this based, though, again on the official government documents that the Census Bureau have designated for these matters?

Mr. Schuler: It is, Your Honor, but we do not have that portion of the census document in Court so we can tell what is a part of the urban place. It may take in the city, it may take two counties around the city.

Further, we could not tell from the study made by Miss McGinn whether the persons who are included as Spanish surnamed persons live within the city limits itself, and where they live with relationship to a terminal of T.I.M.E.-DC.

The Court: You are saying she is comparing apples with oranges, or maybe——

Mr. Schuler: That's correct. We don't think there is a proper support for these to be entitled to any weight in the proceedings.

In addition, the figures as to the earnings between supervisory personnel and hourly rates of personnel, as will be shown later, are based upon a factual inaccuracy since the supervisory personnel are paid twice a month rather than every two weeks.

The Court: Again, this is apples with [79] oranges.

Mr. Schuler: Again, that is the case.

And in addition, the only purpose of such an exhibit would be to show that the total earnings at the end of a year were different as between the two types of positions and an attempt to show that there is some discrimination in the pay that a supervisor earns during a year and the pay that an hourly rated employee earns during a year. We had no foundation there to show the total number of hours that might be worked by an average hourly rated employee as opposed to a supervisor,

whether either of them work overtime, and I'm sure in most categories they work overtime, or to show what the overtime rate was for the hourly rated employee, or to show whether or not the supervisory employees received any money for overtime, which later proof will show he does not.

Again, I don't think there is enough foundation for the exhibits to be admitted.

The Court: You're saying those are not sufficient statistics to even show that one line of employment is more attractive or beneficial than another line of employment.

Mr. Schuler: Those latter figures, I do not think they are sufficient to show that because we will have exhibits through our witnesses that will show on an actual basic supervisory employees make less money than line drivers make, all the hours they work are considered.

[80] More pertinently, the figures we will introduce will show that city supervisors make less per hour than city drivers make.

The Court: Which is, according to the allegations, a lower form of employment.

Mr. Schuler: That is right. The statistics that have to do with the people of working age who are in the SMSA and in the city areas, in addition to being faulty, and not a proper foundation, because they don't tell what area is taken in and where persons are located within the area, similarly were not broken down by the number of males versus females with any indication as to how many of the employees or the applications are males versus females.

In addition, they were not broken down to show the validity of using the age span of twenty to sixty-four as a typical working area. As pointed out in the cross-examination by Mr. Wells, some age higher than twenty must be used and is used by companies.

The Court: Required by law.

Mr. Schuler: That's right. It is required by law.

The Court: Is there any limit on the top age for a driver that you know of by law?

Mr. Schuler: I don't know of any, Your Honor.

[81] The Court: Well, I recognize what you're talking about, the difference between twenty and twenty-one, as Mr. Wells brought out.

Mr. Schuler: For these reasons, I believe that we should not have to respond to these statistics when the statistics are unreliable and they are in a sense oranges, and if we try to respond to them, we will have to be responding with apples. There's no way to test the validity of the assumptions underlying those exhibits.

Mr. Wells: If the Court please, I would add that there is no predicate laid as to the working age actually applicable in this industry, or to this employer, nor is there shown any relationship to the available qualified work force.

Basically, my objection is that it is totally irrelevant to any issue in this case until there is some connection made of available qualified work force.

The Court: You say discrimination must be narrowed down to those who are qualified for a job and are thereby discriminated against.

Mr. Wells: Basically, what I'm saying is if there were a hundred blacks and ten whites and the ten whites had the jobs and none of the hundred blacks had the jobs, to show discrimination they would have to show some basis of available qualified work force. We can't assume either that the **[82]** whites or the blacks are qualified. That is a matter of proof. And as I understood the cross-examination, that basic issue as to relevance had not even been taken into account in any of these exhibits.

The Court: Well, gentlemen, I understand your objections. I think so far this case just proves the old adage to me that you can either prove or disprove anything by the use of statistics, but I'm going to overrule the objections.

I'm going to let them go to the weight and credibility of the testimony and will consider them as such, and secondly, I am overruling them because after all, the government has just started its case. They may bring in some buttressing testimony. They may or may not, but I will overrule at this time and permit the government to go ahead.

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[101] The Court: Mr. Fenton, if you will, call your next witness, please, sir.

Mr. Fenton: Mr. Tom White.

THOMAS WILLIAM WHITE,

called as a witness at the instance of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Fenton

Q. What is your name? A. Thomas William White.

Q. Your address? A. 2009 North Central, Los Angeles, California.

Q. What is your race, Mr. White? A. American Negro.

Q. What is your education? A. High school.

Q. Are you a high school graduate? **[102]** A. Yes, I am.

Q. Where are you employed? A. T.I.M.E. D.C. in Los Angeles.

Q. California? A. California.

Q. What is your job with T.I.M.E.-DC? A. Heavy-duty truckdriver.

Q. When did you first start to work for the company, Mr. White? A. 1946.

Q. What was the company known as at that time? A. Southwestern Freight Line.

Q. Did Southwestern later become T.I.M.E. Freight? A. Yes, it did.

Q. Do you recall about when that was? A. It was in the early fifties. The best of my knowledge, around '52 or 3, I believe.

Q. Before going to work for Southwestern, Mr. White, did you have any truck driving experience? A. Yes, I did.

Q. Could you relate what that was? A. I worked for a company, Public Freight Line. I worked for a private milk hauler for Safeway Stores, and I worked for my brother hauling produce out of Bakersfield, and Ideal Sawdust Company, all truck driving jobs.

[103] Q. Do you recall about how many years you worked for Public Freight? A. It is kind of hard to say it's so far back. I'd say a year, maybe a little better.

Q. Excuse me. What kind of equipment did you drive for Public? A. Semi-truck-trailer.

Q. Where did you drive to, sir? A. Well, I drove local around the city through Los Angeles and Hollywood, then I had a run to San Bernardino, Riverside, Pomona, all out in that area.

Q. About how long did you drive hauling milk for Safeway? A. Oh, between six and seven months.

Q. What kind of equipment did you drive there? A. It was a semi-trailer-tractor.

Q. What kind of—pardon me. How long did you drive for Ideal Sawdust Company? A. I would say approximately a year.

Q. What kind of trucks did you drive there, sir? A. These semi-tractors and bobtails, both. It depended on how much you had to pick up or deliver.

Q. Did I understand that you also drove for your brother or with your brother? A. Yes, I did.

Q. About how long did you drive with your brother? **[104]** A. Oh, I started that when I was just a school kid going with him, I guess, about seven or eight years, just more or less helped him, you know, going north hauling fruit back to Los Angeles.

Q. Going north to—— A. Bakersfield.

Q. What kind of truck did he drive? A. He had a semi.

Q. What was your first job at Southwestern? A. Well, my very first job was a swamping job.

Q. How long were you a swamper? A. Only one day. I didn't plan on keeping that. I was at our hiring hall for withdrawal out of our union altogether and one of their trucks came in and he had a load of rock on it and that was a hard job, nobody wanted to handle rock, and he couldn't get anybody, so this fellow, Walker, he came up and asked me as a favor would I go with him. I had talked to him before, and I went with him that evening and we went in and he told the boys that I was a good worker so the boss asked me if I would come back the following day and the following day I was on the dock and we worked dock and drove both in those days, and a call came in to pick up a load at one of our Air Force bases and they didn't have a driver available, so he asked a man in the shop and he said no, he wouldn't go, because he worked in the shop, and had work to do, so then I spoke up on my own and

[105] I told him well, I am a driver, I am in 208, I am in the Brotherhood, and he went in the office and pretty soon he came out and he says, well, grab that semi and go get it. From that day on, that was the second day I worked there, I drove ever since.

Q. So you have driven at Southwestern and later T.I.M.E. your entire employment period there with the exception of your first day as a swamper. A. One day.

Q. Could you explain to the Court what a swamper is? A. A swamper helps load and unload equipment period.

Q. What kind of equipment do you drive for the company, Mr. White? A. Well, their heavy duty equipment, their diesel equipment, doubles, five-axle, anything they own.

Q. Are you familiar with the road rigs at that terminal; that is, the rigs that the company uses on the road that road drivers drive? A. Very much so, as much as the man that built them.

Q. How do they compare with the rigs that you drive? A. They are all the same. There is no difference.

Q. Of course, do you drive diesels? A. Yes, strictly.

Q. Now, while you were working at Southwestern, Mr. White, did you ever have occasion to make extra trips on the road? **[106]** A. Yes. In '49 and '50 and part of '51 I drove line for Southwestern on extra trips from two to three trips per week, and we drove to Blythe, a layover in Blythe. We laid overnight in Blythe.

Q. How far is Blythe from Los Angeles? A. Oh, I guess it's a couple hundred miles or so. It's right on the border of California and Arizona.

Q. Did other city drivers for Southwestern also make these extra line trips? A. Yes.

Q. Pardon me. What was their race? A. Caucasian, all of them.

Q. Do you recall the names of some of these Caucasian city drivers? A. They were good friends of mine. Glen Brown, Wesley Bartell and Fred Williams. They were the three that were doing it when I was.

Q. Did any of these Caucasian city drivers that you have mentioned later become regular line drivers for Southwestern? A. All three of them got on the regular driver's board, the three of them.

The Court: By regular drivers, you're talking about long haul?

A. (By the witness) Yes, the line. We call them line in L.A. **[107]** The Court: Line.

Q. (By Mr. Fenton) Are these three persons any longer with the company? A. (By the witness) No. A couple of them have passed on, and one went into business, I hear, for hisself.

Q. During this period when you were driving these extra line trips, Mr. White, did you inquire of any company officials for a regular line driver job yourself? A. Yes, sir, I did.

Mr. Hunter: Objection, Your Honor, leading the witness and also I question the foundation, the absence of foundation for the question.

The Court: Oh, I'm going to overrule that and let him go ahead and answer the question. I think it expedites this.

Mr. Wells: If Your Honor please, may he be required to specify time and place?

The Court: All right. I think that is reasonable. Tie it down just a little more.

Q. (By Mr. Fenton) Mr. White, would you repeat when you made these extra line trips?

The Court: That is in the early 1950's. We got that. That is not——

Q. (By Mr. Fenton) My question then to you, Mr. White, was during the period that you made these extra line trips, did **[108]** you ask any company officials to become a regular line driver?

Mr. Wells: If Your Honor please, we object to this. He couldn't have been violative of any act in 1950, an act passed in 1964, and not effective until 1965. Therefore, we say it is immaterial and irrelevant whatever may have occurred then.

The Court: Let's just cross this bridge right now. Are you saying that even though there might have been a practice of discrimination prior to 1965 that it is immaterial to this lawsuit, even though there might be a contract that perpetuated that old discrimination; is that what you're saying?

Mr. Wells: I am saying that the mere fact of a discrimination in 1950 was unlawful, and the fact there is——

The Court: Was not unlawful, you mean.

Mr. Wells: Was not unlawful in 1950, that's correct.

The Court: All right.

Mr. Wells: And that can have no bearing on the state of facts under an act which makes it lawful or unlawful after 1965.

The Court: Well——

Mr. Wells: It is too remote.

Mr. Hunter: Your Honor, also, to a degree that is my objection. It depends on whether or not he intends **[109]** to use the evidence as to individual discriminatees. It becomes immaterial, and that is as Mr. Wells has pointed out, the act itself did not become effective until 1965, and accordingly, any act prior to that time would not be considered in violation of the act.

The Court: Well, I am going to overrule. Now, I want it understood that I am not holding that this lawsuit is going to determine individual rights of discrimination between this witness or anybody else. That's not going to be determined, especially

in 1950, but I think the government is entitled to show, if they can, and by competent evidence, that discrimination existed, although that discrimination might not have been unlawful, but it became unlawful in 1965, and if the companies are now doing anything that would perpetuate the discrimination, even though it wasn't lawful, even though it did exist, they are entitled to show it. Now, it goes very critically to the weight of this evidence when we talk about the early 1950's, but I am going to let that go to the weight of the testimony rather than the admissibility.

I'll overrule and you may proceed.

Q. (By Mr. Fenton) All right. Mr. White, then I'll ask you during the period when you were making these extra line trips for Southwestern in the early 1950's, did you inquire of any company officials for a regular line job for yourself? A. (By the witness) Yes, I did.

[110] The Court: Just tell us who and when.

A. (By the witness) All right. Well, the fellow, the one that first sent me out on a line trip, Fred Anderson, and Dick Koontz, I was standing there and the job came up and they just couldn't holler for someone else, so they asked me if I wanted to make it and I says yes. So then, they spoke up and says, well, you know, Blythe is a very prejudice town. Do you think you can get a place to lay over, because you have to stay overnight and I told him, well, I am a grown man, if I have to sleep out in the woods, I can make it until the next night. So one of the other line drivers named Friday, he spoke up and he says, I'm going out before Tom and by the time Tom gets to Blythe I will have him a place to stay, and that was in the early fifties.

When I asked the——

The Court: I don't believe that is your question, is it?

Mr. Fenton: Well, Your Honor——

The Court: He might have misunderstood your question or I misunderstood it.

Mr. Fenton: I believe he did name the two officials that he asked for a regular line job.

A. (By the witness) Fred Anderson and Dick Koontz.

The Court: He is not testifying as to any regular line job. He's talking about a temporary one-trip **[111]** job.

A. (By the witness) No, I asked for a regular at the time.

The Court: Let's go into that, then.

A. (By the witness) Yeah, I was making these—they were sending us out on these temporary—this temporary deal, so I asked to get on steady, in other words.

The Court: Asked whom, who did you ask that?

A. (By the witness) Fred Anderson and Dick Koontz.

Q. (By Mr. Fenton) What was Mr. Anderson's position with the company, as you recall? A. (By the witness) He was more or less like a terminal manager then. He was the head man there in Los Angeles.

Q. What was Mr. Koontz position? A. Well, he was more or less like, he was the supervisor. In those days he worked the dock, the office. They didn't have very many supervisors. One supervisor, he done it all. It wasn't broken down like it is today. One man had a lot of jobs when he was in the supervisory category.

Q. Koontz was a supervisor. A. Yes, he was.

Q. Did either Mr. Anderson or Mr. Koontz offer you a regular line driver job? A. No, they didn't.

[112] Q. At this time, Mr. White, were there any regular—pardon me. Were there any blacks employed as regular line drivers at the company? A. No, there wasn't.

Q. Now, you mentioned that T.I.M.E. Freight later took over Southwestern. Did you ask any officials of T.I.M.E. Freight about a regular line drivers' job? A. Yes, I did. I asked one time, Mr. Bob Adams and a Mr. Stanky, Rex Wright, he was the manager there for awhile. Yes, I did.

Mr. Hunter: Your Honor, again, just for the purpose of the same objection we raised before, if we could ascertain more closely the time.

The Court: I don't mean the day, but somewhere within a year as to what we're talking about, because I want to judge the remoteness of it.

Mr. Fenton: I am going to go into that right now, Your Honor.

Q. (By Mr. Fenton) Do you recall approximately when you asked Mr. Bob Adams for a regular line driver's job? A. (By the witness) It was right after—it was right after T.I.M.E. had taken over, and the reason I asked him, my extra line jobs stopped just like that when T.I.M.E. did take over. I never made any more.

Q. Any extra line hauls? **[113]** A. Any extra trips of any sort.

Q. What was Mr. Adams' position with the company, if you recall? A. He was—well, we call him an operation manager these days.

Q. Who was Mr. Keith Stanky? A. He was the terminal manager.

Q. When did you ask Mr. Stanky for a regular line driver's job? A. Well, I approached Mr. Stanky right constantly from the time he came there until just before he left.

Q. And do you recall approximately when he came? A. Mr. Stanky came there in about—I guess around 1954, or so, I guess.

Q. When did he leave to the best of your knowledge? A. Last year, '71.

Q. What did Mr. Stanky tell you when you asked him for a regular line driver's job? A. Well, he told me the same thing the rest did, that he would have to check with Lubbock, that it made no difference to him, but he would check with Lubbock. Those are his very words.

Q. Did he ever offer you a regular line driver's job? A. No, he didn't.

Q. Did Mr. Adams ever offer you a regular line driver's job? **[114]** A. No.

Q. Do you recall asking any other officials of T.I.M.E. about a regular line driver's job? A. Yes, Mr. Jack Starr.

Q. Who is Mr. Starr? A. He was the assistant terminal manager.

Q. Do you recall approximately when you asked Mr. Starr for a regular line driver's job? A. He was Keith's assistant. It was in the sixties, '63 or '64, right in there, I believe.

Q. What did Mr. Starr tell you? A. He told me he had to check with Lubbock.

Q. Did Mr. Starr ever offer you a regular line driver's job? A. No, he didn't.

Q. Mr. White, did you ever file a complaint with respect to your inability to get a regular line driver's job with the company? A. Yes. I filed one with the State of California.

Q. Do you recall approximately when that was? A. That was in 1961.

Q. What was the result of that complaint? A. The State claimed that I had waited too long, statute of limitations, and I told the State it was happening today so no time has passed as far as I am concerned, but they said it **[115]** had.

Q. Now, after you filed your complaint with the State, was there any change in the kind of assignments that you received at the company? A. Very much so.

Q. Would you explain that? A. We were hauling crude rubber out of Texas here, little blocks of rubber, and sets of doubles come to about forty-five thousand pounds to the set, and after I filed with the State and lost my case, well, I could look forward to five days a week of doing nothing but unloading this rubber, which nobody wanted. It's a very dusty, dirty job, and heavy, and the way they did it to me, they didn't even give me the courtesy of coming back to the yard to get another load myself for a little breathing time, driving time. They had a man out of our shop to bring me a full load and drop it there before I got through with the load that I was working on, so I could just keep going all day.

From the time of the morning I got to the Goodyear Rubber Company, I didn't leave until in the evening when there was no more rubber to unload.

The Court: What year are we talking about, now?

A. (By the witness) That was in '61 right after I filed with the State against them.

[116] Q. (By Mr. Fenton) Who assigns loads to city drivers? A. (By the Witness) Well, our assignments come directly from our city dispatcher. That is who our assignments come from.

Q. Is it normal to rotate the kind of loads that you are assigned? A. Well, our city dispatcher, if he gives you a bad load today, he never repeats it. He rotates all bad loads. He kind of tries to rotate it so everybody gets a little of the bad and the good.

Q. Were your loads rotated up until the time you got—— A. Oh, yeah they are being rotated again.

Q. How long were you given on the rubber-hauling assignments? A. Well, the rubber—the rubber deal lasted a good eight or ten months.

The Court: Then, after that they started rotating these bad assignments and it's been that way ever since?

A. (By the Witness) Yeah, he cooled off.

Q. (By Mr. Fenton) Mr. White, have you ever had a chargeable accident with the company? A. (By the Witness) No, not in the last—in the past twenty-two years. It's actually twenty-three years.

Q. I hand you what has been marked as Plaintiff's Exhibit 62. Do you recognize that as the copy of a safe driver award **[117]** certificate that you received from the company? A. Yes.

Q. And what is the date of that award? A. The date of that one is February 7th, 1969.

Q. For how many years? A. For nineteen years.

Q. And have you subsequently received another award? A. I have a brand new one here that I got in '71 for twenty-two years, and I haven't——

The Court: All this time you've been a city driver, though, except for these temporary——

A. (By the Witness) Yes. And in between hauling to Twenty-nine Palms, which is the jurisdiction of 224 in Barstow, and like that, it's in their jurisdiction, but they allowed me to do that, hauling explosives to the government.

Q. (By Mr. Fenton) What period of time was that that you ran those trips to Twenty-Nine Palms? A. (By the Witness) Well, most of it was from '67 to about '69, '68-69. I did a whole lot of it in there, in that period.

Mr. Fenton: Could I have a moment, Your Honor.

The Court: Yes.

Mr. Fenton: I'd like to offer Plaintiff's Exhibit 62 into evidence.

The Court: Is that the state driving **[118]** certificate?

Mr. Fenton: Yes, sir.

The Court: Any objection?

Mr. Schuler: No objection.

Mr. Wells: No objection.

The Court: It's admitted.

(Plaintiff's Exhibit 62 received into evidence by the Court as Plaintiff's Exhibit 62—State driving certificate for the witness, Thomas White.)

Mr. Fenton: That's all.

Mr. Hunter: Your Honor, we have no further questions.

The Court: Mr. Wells?

Cross-Examination

By Mr. Wells

Q. Mr. White, there is in evidence here as Exhibit 205 some information about the annual earnings of some of the employees. There are two Mr. Whites listed on Page 1 in the Los Angeles station. One is K. J. White and the other is T. W. White, is T. W. White you? A. That would be me, yes.

Q. And that shows an annual income of $11,222.03. Is that correct? **[119]** A. When was that? I don't know what year you are speaking of.

Mr. Wells: May I approach the witness?

The Court: Yes, yes.

Q. (By Mr. Wells) This is a government exhibit in this case, Number 205, and it shows here on the first page, Mr. T. W.

White, Number 93088, and 001 is a code number for Los Angeles, and it shows $11,222.03. Is that correct?

The Court: Well, the question was what year is that for, what year.

A. (By the Witness) Sixty-nine. I see '69.

The Court: Does that answer your question, Mr. White?

A. (By the Witness) Well, yes. I guess it is correct with the records. I don't know offhand. I don't have mine with me.

Q. (By Mr. Wells) Is that typical of the income you have had from your work with T.I.M.E.-DC in the last three or four years? A. (By the Witness) Well, yes.

Your Honor, could I say one thing?

The Court: In a minute.

A. (By the Witness) All right.

Q. (By Mr. Wells) Now, you have a very high seniority listing on the city board, do you not? **[120]** A. (By the Witness) Yes, before we merged with DC. I had been Number One with T.I.M.E. for many years.

Q. And at the time of the merger somebody else with a little more seniority came in, so you are Number Two. A. I am Number Two.

Q. Now, that means that you get your choice selection of the city jobs periodically. A. No, no, that does not mean that.

Q. Does it have any significance in connection with the city jobs? A. It helps a little, but it does not mean that. I can't choose anything.

Q. I'm sorry. I didn't understand you. A. I said I can't choose any job.

Q. Well, are there periodic postings of jobs in Los Angeles for the city? A. No.

Q. Are there ever any such postings? A. No. The only way you know a day ahead of time what you're going to do is if he has an early job which may be loading of tires or anything. It doesn't mean it's a good job. And he has to ask by seniority if you want to start before your regular starting time by seniority. That's the only time you know a day ahead of time what you're going to do.

The Court: Just on the early starting **[121]** time.

A. (By the Witness) Just before you—We have a bid starting time. If it's something before that, he has to go by seniority.

Q. Now, if I recall, you are on the city heavy duty board as distinguished from the city drivers in Los Angeles, is that correct? A. I am a city driver.

Q. Well, are there some city pickup and delivery drivers who make less than truckload runs with bobtails and small trucks? A. Oh, sure. All outfits have those, yes.

Q. Are they in the same bargaining unit you are in? A. If they have seniority. If any of them had seniority they could bump me from my job, yes. We are all the same, Local 208.

Q. 208. I see. But it is your understanding that there is no posting of any of those jobs with respect to the unit that is represented by 208. A. Not heavy duty, no. Those loads like the loads that are coming into Los Angeles today will be delivered tomorrow morning. There's no way for them to issue those loads out only the way I said. If it's some customer that has to have his load early, our earliest starting time is 7:00, and if some customer wants the freight there at 6:30, well, then, the **[122]** dispatcher has to go down the line by seniority and try to get a man to come in early so he can get that to the customers at 6:30, is the only way.

Q. How long have you been a member of Local 208? A. About thirty years, I guess, or so, or better.

Q. Was there any grievance filed in connection with this matter out at Goodyear? A. Well, I am going to be honest with you. In those days, if you just want the honest truth, in those days it didn't pay to make a fuss because if you did you weren't there, so I had to live, I had a young family coming on and I did it. I was young and I could do it.

Q. I take it you did not file any grievance about that matter. A. Not with the union, no. They wouldn't help me.

The Court: Mr. White, a moment ago you wanted to qualify something about your annual earnings.

A. (By the Witness) Yes.

The Court: Go ahead. What was it?

A. (By the Witness) I would just like to know why is the union representative basing my earnings against Kenny White, which is a pickup driver? Why doesn't he base mine against a line driver, which makes more? He weighs my earnings against a man with a lesser job. Why don't he base my earnings against a man——

[123] The Court: I can't answer that.

A. (By the witness) I know, but I am asking him. I am asking him why did he pick——

The Court: You'll have to ask the government.

A. (By the witness) Why did he pick a bobtail job——

The Court: Mr. White, I don't have the answer to that question. Let me ask you, I don't know as it is relevant to this suit, and I 'm not saying you don't have a valid question to ask, but right at this proceeding we are not deep enough into it, but from the context of your testimony I gather that a long-haul trip is more attractive to a person in your position than the heavy-duty city driver, is that right?

A. (By the witness) No, not exactly. It's more money, I'll tell you for sure. My family could have lived much better if I had been a line driver all these years.

The Court: How much more?

A. (By the witness) I would say anywhere from three to four thousand dollars a year.

The Court: All right. Now, that, of course, is more attractive, isn't it?

A. (By the witness) You better believe that it is.

The Court: What else have you got in mind here? You seem to indicate otherwise, that is wasn't as attractive. What did you mean by that?

[124] A. (By the witness) Well, your city driving, your line drivers, we have line drivers in their sixties and they can get in those trucks, you know, and the job I have you can't pick out too many heavy-duty drivers that are still on the job at that age. It's a hard job. See, we have forty-five-foot trailers now and you get in the backend of one of those and maybe there is six thousand cases of something to unload and all of that is by hand.

Well, on the line, you just drive. You last a long time and you make pretty good living.

The Court: Maybe I misunderstood it. Which is the better job?

A. (By the witness) That line job. That's why I fought for it since '50.

The Court: You'd like to have one today, I presume?

A. (By the witness) Oh, yeah.

* * * * * * *

Supreme Court, U. S.
FILED
JUL 21 1976
MICHAEL RODAK, JR., CLERK

APPENDIX
Volume II

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-636 and No. 75-672
(Consolidated)

No. 75-636
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent,

and

No. 75-672
T.I.M.E.-D.C., INC.,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI IN NO. 75-636 FILED OCTOBER 29, 1975
PETITION FOR CERTIORARI IN NO. 75-672 FILED NOVEMBER 6, 1975
CERTIORARI FOR BOTH GRANTED MAY 24, 1976

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

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[134] IRIS GORDON HICKS,

called as a witness at the instance of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Contreras

Q. Would you please state your name? A. Iris G. Hicks.

Q. What is your address, Miss Hicks? A. 2329 Annabelle Lane, Forth Worth.

Q. What is your race? A. Black.

Q. What is your education, Miss Hicks? A. Two years college level.

Q. And where was this? A. Lincoln University, Jefferson City, Missouri.

Q. Were you ever employed by T.I.M.E.-DC or a predecessor company of T.I.M.E.-DC? A. Yes, I was.

[135] Q. What was that company? A. Pardon?

Q. And what was that company? A. It was at that time Denver-Chicago Trucking Lines.

Q. I'd like to hand you what has been marked as Government's Exhibit 161, which is titled a Denver-Chicago Trucking Company Application for Employment. Are you able to identify this? A. Yes.

Q. And this is your signature on Page 4? A. Yes.

Q. And what was your name at that time? A. Iris G. Darden.

Q. And when were you employed by Denver-Chicago? A. 1966, about August.

Q. How did you happen to apply for employment with Denver-Chicago? A. The Urban League in the City of Los Angeles

qualified me for the position that was open and sent me there.

Q. And do you recall the name of the person who referred you? A. No, I don't.

Q. Were you given any information about the referral? A. Yes.

Q. What was that for? A. The company had not previously hired blacks and I would **[136]** be the first black to have an office position for the company.

Q. All right. And what kind of work experience did you have at that time? A. I had been a telephone operator, I had been a teletype operator, I was a licensed beautician.

Q. And at the time of your application, did you take any tests? A. Yes, I took a general aptitude test.

Q. And who administered this examination? A. I believe that was Mr. Dave Nagel, but I am not positive.

Q. And do you know what his title is, or was? A. No title as such. Personnel department.

Q. For whom? A. Denver-Chicago.

Q. All right. I'd like to hand you what has been marked as Government's Exhibit 162(a) and 162(b). These are entitled Personnel Tests and CWF-2. Are you able to identify these? A. Yes.

Q. And what are these? A. My examinations that I took.

Q. These are copies of the examination which you took? A. Yes.

Q. Upon your application for employment with Denver-Chicago, what happened when you applied? A. After I was given the examination, I was told that I **[137]** would hear from them.

Q. And do you recall with whom you spoke? A. If it was not Mr. Nagel, I'm not sure. It's been a long time.

Q. Can you give us an idea of what title the person may have held? A. Yes. Personnel department. I only talked with the personnel department employees.

Q. All right. Were you notified of the results of the examination? A. Yes.

Q. And how were you notified? A. By telephone. I was called and told that I passed the exams; that I was to report to work the following Monday.

Q. Was there any indication when you made application and took these tests of what position was open? A. No, not at that time.

Q. Did you at that time know who your supervisor would be? A. No.

Q. Was there any mention of your race made? A. Not at that time.

Q. All right. When were you notified that you would be employed by Denver-Chicago? A. By telephone, either the first or second day after I had taken the examination.

[138] Q. And what was the procedure at that time? A. Was I available for work immediately, because it was like the middle of the week, Wednesday or Thursday, and I said I was and they asked me if I could report to work on Monday and I said I could.

Q. All right. And what happened when you reported for work? A. When I reported for work, I talked to this same individual in personnel who told me that I would be a billing clerk. They had a person who was leaving in the billing department and I would take her place. She would train me for—yes, for four weeks before she left. I think that's correct.

Q. Was any mention made of the duties of this position? A. Not by him.

Q. All right. Did you receive any indication as to the duties of that position? A. Well, when I met the person who was going to train me. I did not from the personnel individual.

Q. All right. And who was to train you? A. It was an individual who occupied the job, and her first name was Nancy. I do not remember her last name.

Q. All right. And was there any indication of the length this training was to take? A. Four weeks.

[139] Q. At the time you reported for work, was there any mention made of your race? A. Yes. I was called in by a different person in personnel, and I do not remember the name, and he mentioned that I was the first Negro ever to be employed by the company in the office, and he said if I ever had any problems, to let him know.

Q. Mrs. Hicks, I'd like to hand you what has been marked Government's Exhibit 163(a). This document is entitled Application for Fidelity Bond. I'd like to have you refer specifically to the portion that is Item Number 6, which is entitled State Duties to be Performed, and what is typed in there. A. Stripping and sorting and preparing bills for collection and filing.

Q. Were these the duties of the position which you held? A. Yes.

Q. Essentially what is that function? A. Bills come with many carbon copies, and they have to be stripped. The carbon has to be taken out and each portion of the bill goes to a different place, or has to have certain markings or certain identification, and then it has to be labeled and sent to a different department.

Q. When you arrived to begin work, were you given instructions at that time as to the performance of your job? A. No, not at that time. When I was introduced to Nancy, **[140]** Nancy gave me instructions about the job.

Q. What instructions were you given? A. Basically, what I would be doing as a billing clerk.

Q. And was this essentially more or less a sorting and routing of copies of the bills? A. Yes.

Q. Did you make any observation as to the amount of workload on the job at that time? A. Yes, I did. I asked questions.

Q. All right. Was there any visible indication of the amount of workload on that particular job? A. It appeared to be about a year's work on that particular desk because the bills were piled all over the floor, in the desk drawers, on top of the desk and around the sides.

Q. And did this person that you have named as Nancy make any observation about this? A. Yes. She told me not to worry about it, the desk had never been caught up since she had worked there. It never would, and that the desk was overloaded.

Q. How long were you trained by the person you have named as Nancy? A. Four days.

Q. Do you know the reason for the length of training? A. She personally told me that she had to leave earlier than she had expected to leave because she was being—she **[141]** was moving out of town.

Q. Was anyone else assigned to train you? A. No.

Q. Were you in fact trained by anyone else? A. No.

Q. After the four-day period you began working by yourself. A. Yes.

Q. Were you able to make any progress as to this work level —excuse me, the workload which she mentioned? A. Yes, I did. The first day I was alone I completed a bottom drawer, which is where we always began with bills, and I completed a drawer and started on another drawer.

Q. Was there any comment on your work during the period of your employment by your supervisor? A. Yes.

Q. And what was that comment? A. I was not working fast enough and the bills had to be caught up.

Q. And who made this comment? A. The supervisor who is immediately in charge of the desk that I was on. I don't remember names.

Q. All right. Do you know what his position was? A. Other than supervisor, I don't remember.

Q. Approximately how long was this after you began employment? **[142]** A. It was on the Monday which was—would have been the sixth day of my employment.

Q. Did you make any notations during your training? A. No. I was told that when I started to make notes, there wasn't time to make notes, there was so much to be learned, and I didn't have time to write it down.

Q. Who made this observation? A. Nancy.

Q. Did you make any notes? A. Not while she was there.

Q. Did you later make any notes? A. Yes, I did. It was impossible to remember all the things that had to be done.

Q. Did you ever make any other written notations as to the work to be done? A. Yes, I did. I was accused of sending certain bills to the wrong desk and before I was accused of this I had written down what desk the bills went to so I could remember, because there was such a variety of things that had to be done. When I was accused, I checked the list that I had made to see if my list was correct. First, I had checked with someone to be sure where they were supposed to go, and they said they were suppoed to go to this particular desk, and when I checked my list that was the desk that I had taken them to. However, I made no mention of having had a list to check.

[143] Q. Who made this comment to you about sending these items to the wrong desk? A. The supervisor.

Q. Now, this is your immediate supervisor? A. Yes.

Q. All right. And whom did you ask what desk these bills were to be sent to? A. Nancy, and after Nancy left, there was one other person who had previously worked the billing desk, and I asked her where the bills went.

Q. What were the circumstances under which you left Denver-Chicago? A. I was terminated.

Q. And with whom did you speak? A. I spoke to an individual that I had never seen before, who was in a supervisory capacity.

Q. Do you recall his name? A. No, I'm sorry, I don't.

The Court: When, Counsel?

Q. (By Mr. Contreras) Yes. How long after your employment did this occur? A. (By the witness) It was one day short of becoming a union member, and whatever the qualifications were, I think they were thirty days.

The Court: How many, thirty?

[144] A. (By the witness) Yes.

The Court: You worked almost thirty days?

A. (By the witness) Right.

Q. (By Mr. Contreras) Do you know the reason why you did not speak with your supervisor? A. (By the witness) Rephrase the question, please.

Q. Do you have any knowledge as to why you did not speak with your supervisor at that time? A. When I was terminated?

Q. Yes.

Mr. Schuler: Your Honor, could I have that question read?

(The immediate preceding question was read to Counsel by the reporter.)

Mr. Schuler: I object to the form of that question, Your Honor. I think that calls for a conclusion.

The Court: I sustain the objection. I think the question is why did you not speak with the supervisor. Is that your question.

Mr. Contreras: That is my question, Your Honor.

A. (By the witness) I have no idea.

The Court: You don't have any idea why you didn't speak with him?

A. (By the witness) Right.

[145] Q. (By Mr. Contreras) What reason were you given for your termination? A. (By the witness) I was not dexterous.

Q. Have you ever performed any work requiring dexterity? A. Yes.

Q. And what positions would those be? A. Switchboard operator, teletype opeartor, beauty operator.

Q. What was your reply to this reason for your termination? A. I asked him if he meant what he was saying and he answered yes, and he asked me if I knew what dexterity meant and I said well, maybe I don't, and he said being able to use your hands. And I asked him again, are you sure you mean that I am not dexterous, and he said yes.

Q. Have you ever taken a dexterity test? A. For the State of California, for the telephone company, and for Adams Answering Service.

Q. Did you ever ask any of your fellow employees about the duties to be performed on the job? A. None of my fellow employees spoke to me or talked to me.

Q. Was this just during the actual operation of the office hours? A. This was during a period from the time I arrived at work until I left work.

Q. Did you have any occasion to inquire about the operations of the job during break time? **[146]** A. When Nancy was still there, the four days she was there, the first day she took me

to the cafeteria and the tables were long and joined, several tables pushed together, and when we sat down, everyone else at the table moved to the far end of it.

One day after she left I attempted to go in the cafeteria and eat my lunch and everybody moved away from me. After then I stopped eating in the cafeteria. I ate either in my car or I would leave the grounds.

Q. Was the office under a collective bargaining agreement at this time? A. Yes.

Q. Were you a member of the union? A. No. I was—I received a union card after I was terminated in the mail.

Q. Do you recall what union that was? A. I know very little about unions, but I think it was AFL-CIO.

Q. I'd like to hand you what has been marked as Government's Exhibit 163(b), which is a medical history questionnaire. Are you able to identify this as your signature? A. Yes.

Q. Mrs. Hicks, did you remain in Los Angeles after your termination? A. For awhile.

Q. How long? **[147]** A. When I was terminated, immediately after having been terminated, I had to see a doctor and my doctor put me in the hospital under an extremely nervous condition, and other problems, and that was in September and I remained in Los Angeles until January of '67.

Q. And at that time what happened? A. I went—I moved to Oklahoma. My father was ill and I moved to Oklahoma to help him with his business.

Q. From the time that you left, did you return to work in the Los Angeles area? A. I didn't return to work.

The Court: How long were you in the hospital?

A. (By the witness) Approximately ten days.

The Court: Was this because of your nerves, you say, or that was part of it?

A. (By the witness) Yes, sir. I had a——

The Court: Have you had any trouble before?

A. (By the witness) Not of that type.

The Court: Do you think it had anything to do with the job?

A. (By the witness) My doctor did.

The Court: Your duties on the job?

A. (By the witness) Not the duties, sir, the conditions. Not duties as such, but conditions.

[148] Q. (By Mr. Contreras) Mrs. Hicks, I'd like to hand you what has been marked as Government's Exhibit Number 160, and this is entitled, Los Angeles Urban League Referral Card. I would like to know whether you are able to identify it. A. (By the witness) Yes.

Q. Now, did the work you performed for Denver-Chicago as billing clerk require dexterity? A. Yes, it did.

Q. And could you give us some of the details of the dexterity that was required? A. To be able to handle as many pieces of paper as were necessary, correlating these pieces of paper and placing some face up, some face down, stamping, clipping.

Q. And the many dexterity tests which you have related previously, had you taken those before your employment with Chicago, or afterward? A. Before.

Q. Mrs. Hicks, the employment which you indicated, I believe, with the telephone company and as a beautician, did those positions require dexterity? A. Yes, they did.

Q. All right. And did you hold those positions prior to your employment with Denver-Chicago? A. Yes. And that is where I took the dexterity examinations.

Q. Previous to your employment in those professions. **[149]** A. Yes.

Mr. Contreras: Your Honor, at this time I'd like to offer Government's Exhibit 160.

The Court: Well, aren't they on the pre-trial order?

Mr. Fenton: Yes, Your Honor, they are on the pre-trial order. They are marked as depositions on the pre-trial order. It is our understanding that the defendants may have some objections to some of the depositions, so at this time we'd like to offer these particular exhibits into evidence.

The Court: I admitted them this morning.

Mr. Fenton: Thank you. That included all of the deposition exhibits?

The Court: Yes, sir. Every one of them, subject to the right of these parties to raise their objections at the appropriate time during the trial.

Mr. Fenton: All right. We offer Numbers 160 through 163(b).

The Court: I'm only going to permit you to offer them once. Let's save some record here.

Mr. Fenton: All right. Fine.

Mr. Contreras: No further questions.

The Court: All right, sir.

Let me say, also, it won't be necessary that you offer **[150]** them but once, because the record now shows that they have all been tendered and admitted by the Court subject to later objections, so we won't have to go through all that.

All right, sir. Excuse me.

Mr. Fenton: Thank you.

Cross-Examination

By Mr. Schuler

Q. Mrs. Hicks, have you ever had a job as a billing clerk before you made inquiry at Denver-Chicago? A. Yes, I have.

Q. And where was that? A. At Adams Answering Service where I was also a switchboard operator.

Q. Now, when you received notice of discharge, was that in written form? A. No, it was not. It was in verbal.

Q. I see. And by the fact that you mention dexterity and that this was the language used by the person who discharged you, I gather that you believe that in your opinion you are dexterous, is that true? A. I don't know how to answer that, sir.

Q. Well, do you think you are not dextrous? A. I know that I am dexterous.

Q. It is your opinion that you are dexterous. A. Right.

[151] Q. And now, do you think that other people are entitled to have an opinion of their own about the work of other people? A. Of course.

Q. Do you recognize that someone else might look at your work and might form the opinion that you were not dexterous? A. Then, an examination would be necessary to prove a point.

Q. Well, my point is, do you recognize the right of someone else to have an opinion about your work? A. Sure.

Q. All right. Now, after you were discharged from T.I.M.E.-DC, did you file a charge with the EEOC, or the Post Office Department, about your discharge? A. Yes, I did.

Q. And was that charge dismissed? A. I would not use those words.

Q. Well, was it prosecuted to a completion? A. No.

Mr. Schuler: No further questions.

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[214] LUBBOCK, TEXAS, MAY 4th, 1972
9:00 A.M.

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The Court: All right. Gentlemen, let's see, I believe we had completed with one witness. Are you ready to start with some more testimony or evidence?

Mr. Fenton: Your Honor, before we call our first witness this morning, yesterday you requested that we provide the Court——

The Court: Yes, sir.

Mr. Fenton: ——with a list of those persons for whom we are seeking individual relief apart from class relief.

The Court: It would be most helpful if I could have that to follow the testimony with.

Mr. Fenton: We tender this list with the Court at this time. We have provided copies to the company and the unions.

The Court: Thank you.

Mr. Fenton: Should I leave the original with the clerk?

The Court: Yes.

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[233] **ROGER McCRIMMON,**
called as a witness at the instance of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Contreras

Q. Please state your name. A. Roger Lee McCrimmon.

Q. Mr. McCrimmon, what is your address? A. 2133 East Ledbetter, Dallas.

Q. And your race? A. Colored.

Q. What is your employment? A. T.I.M.E.-DC.

Q. And in what position are you employed? **[234]** A. As a city truckdriver.

Q. When were you employed by T.I.M.E.-DC? A. June 30th, 1969.

The Court: Ninteen when?

A. (By the witness) Sixty-nine.

Q. (By Mr. Contreras) Mr. McCrimmon, I'd like to hand you what have been marked as Plaintiff's Exhibit Number 237, entitled Partial Personnel File of Roger Lee McCrimmon. I'd like to refer you to a document entitled Application for Employment. What is the date of that—I'd like to know whether you are able to identify this. A. (By the witness) Yes.

Q. And is this your signature? A. It is.

Q. All right. What is the date of that document? A. July 7th, 1969.

Q. All right. And in the job applied for, what do you have? A. Truckdriver.

Q. All right. How many years of truck driving experience did you have when you applied? A. Overall, a little over twenty

years, because I started driving a truck when I was fifteen, in 1946.

Q. How much of this experience was over-the-road? A. Approximately two years.

Q. All right. Was this prior to your employment with **[235]** T.I.M.E.-DC? A. Right.

Q. Could you give us an idea of the nature of that driving, the scope of that driving? A. For Tom Hicks Transfer Company, I was hauling heavy equipment, bulldozers, anything; Armour Truck Line, and we hauled meat, frozen food.

Q. To where were you driving? A. Kansas, Chicago, Indianapolis, practically all over.

Q. Was this driving out of Dallas? A. Yes. No, beg your pardon. Out of Fort Worth.

Q. Out of Fort Worth, Texas. At the time that you made the application, did you know whether or not T.I.M.E.-DC had any black road drivers? A. Only hearsay.

The Court: I beg your pardon?

A. (By the witness) Only hearsay.

The Court: Well, did you know any personally?

A. (By the witness) No.

Q. (By Mr. Contreras) Did you ever ask about a road driving job after you were employed? A. (By the witness) Yes.

Q. When? A. April 12th, unless I have my dates mixed up, 1970.

[236] Q. All right. Whom did you ask? A. Mr. Paul Sipels.

Q. What was his title? A. Terminal manager.

Q. What was the response to your request? A. Well, he seemed surprised and said I was better off where I was, and besides it was a company policy——

The Court: It was what?

A. (By the witness) A company policy for a man that has worked in the city for the company to transfer to the road——

The Court: It was company policy for them to transfer?

A. (By the witness) Not to transfer. I beg your pardon.

The Court: Oh, not to transfer.

Q. (By Mr. Contreras) And did you make any inquiry as to the policy? A. (By the witness) Not expressly. We talked about it. He said it was just something that just wasn't done, you know, that they just didn't make a practice of doing that. Once a man worked in the city, well, that was it.

The Court: Now, who is the man that told you that?

A. Paul Sipels.

The Court: Sanders?

A. (By the witness) Sipels.

[237] The Court: How do you spell that?

A. (By the witness) S-i-p-e-l-s.

The Court: What was his job?

A. (By the witness) Terminal manager.

The Court: At Dallas?

A. (By the witness) Yes, sir.

Q. (By Mr. Contreras) Did you know at that time when you made that request whether there were any black road drivers for T.I.M.E.-DC? A. (By the witness) No.

Q. Did you know that there were black road drivers, or that there were not black road drivers? A. Well, at this time, I had been there since '69, and I hadn't seen any. I didn't believe that there were.

Q. Do you know of any city drivers for T.I.M.E-.DC in Dallas who have transferred to road driving for T.I.M.E.-DC in Dallas? A. No.

Mr. Contreras: No further questions.

Mr. Schuler: Could I have just a minute, Your Honor?

The Court: Yes, sir.

While we are waiting here, Mr. Fenton, there is an exhibit that we were looking at yesterday showing employees' [238] dates of seniority. We talked about this exhibit in connection with the testimony of Mr. Walter Gene Price, where there were three blacks hired as regulars just before he went to work, and four just afterward, and I can't find that exhibit up here. Could you give me the number of it?

Mr. Fenton: Your Honor, that is in the Dallas exhibit package.

The Court: Yes. I had it yesterday.

Mr. Wells: It is 146, Your Honor.

The Court: One forty-six. Well, I thought I had it up here. Would this be pertinent about what I was talking about as to Mr. Holley a moment ago?

Mr. Fenton: Yes. The line driver seniority roster is the second page of Exhibit 146.

The Court: That's the one I'm looking for. Yes, thank you.

Cross-Examination

By Mr. Schuler

Q. Mr. McCrimmon, on your application for employment, which has been marked as Exhibit 237, you did state that you wanted a job as "truckdriver", isn't that true? A. Right.

Q. And in your work experience, the driving experience, you showed consisted primarily of two months as a line driver for

Armour Truck Lines in Fort Worth as one of the entries, is **[239]** that correct, and three months as a heavy equipment truckdriver for Tom Hicks Transfer in 1968. Is that also correct? A. Yes.

Q. And five months of driving in—well, let's see, how long did you drive for the flower shop? A. Nine years.

Q. And was that a straight truck? A. Yeah. Well, it was a panel delivery.

Q. Right. And I gather than on the third page of the application, this is why your experience shows up as primarily being on a straight truck, eighteen years on a straight truck, is that correct?

The Court: On what kind, straight?

Mr. Schuler: Straight truck.

The Court: You're talking about a city truck?

Mr. Schuler: That's right.

A. (By the witness) Yes. Including, I had worked for a cement company and a building contractor, and all of this is tied in there.

Q. (By Mr. Schuler) On your experience entries on the application, you listed two years with the truck and full trailer and three years with others, but you didn't put down any mileage from which the company could determine how far you had driven, did you? **[240]** A. (By the witness) No.

Q. Now, under traffic convictions on your application you showed only one conviction on 5/8, 1969, but let me show you a form that you signed at the company. Don't you show a couple of driving convictions on that? A. Yeah.

Q. You do show two convictions for driving in April of '69 and May of '69, don't you? A. Right.

Q. So to that extent, your application is somewhat in error, isn't it? A. Now, what other——

Q. Well, look at your application where you show traffic convictions, you only show the one on May 8th, 1969, there, don't you, and there was another one prior to that, wasn't there; isn't that true, Mr. McCrimmon, from the form that you also have in your file entitled Accident and Violation Record? A. Well, when this application was made, I probably just forgot it, you know. I didn't remember it.

Q. All right. I understand that might be possible, but you would agree with me, wouldn't you, that the traffic conviction section of your application is in error. A. Yes, yes.

Q. And the next section talks about driving accidents, and you show two of them, and you are asked how many accidents have **[241]** you had in the last five years, and you list two there, don't you? A. Yes.

Q. Now, similarly, would you agree with me that the Texas Driver Licensing Record information shows that you have four violations between 1966 and 1968? A. It doesn't indicate on here what it is, and I can't admit to something that I don't know what it is for.

Q. You don't remember the other violations that are shown on the form of the Texas Drivers Licensing Record Bureau? A. No, sure don't.

The Court: Speak up, Mr. McCrimmon, so I can hear you.

A. (By the Witness) No, I sure don't, not offhand.

Q. (By Mr. Schuler) When you asked Mr. Sipel for a road job on April 12th, 1970, did you have any reason to believe that there was an opening for a road driver at that time? A. (By the Witness) Not especially, no.

Q. And Mr. Sipel didn't tell you there was an opening for a road driver, did he? A. No.

Q. Did you ever have any conversation with Mr. Sipel after that about a road job? A. Well, after we talked he said

he'd check with me in a few days, and I will contact Lubbock and let you know.

[242] The Court: He will do what, now, said check with me in a few days?

A. (By the Witness) In a few days he will contact Lubbock and let me know. I believe that this was a Tuesday and I spoke with him again Monday and he said, well, I wrote the letter and, you know, they confirmed my statement. They said that is something that is just not done.

Q. (By Mr. Schuler) Did you ever ask Mr. Sipel for a road job at any time when you believed that there was an opening for a road driver? A. (By the Witness) No. These were the only two times I spoke to him about it.

Mr. Schuler: No further questions.

Mr. Wells: No questions.

The Court: Anything further from the government?

Redirect Examination

By Mr. Contreras

Q. Mr. McCrimmon, you were shown an accident violation record. I'd like to know, is this also entitled T.I.M.E.-DC, Incorporated Accident Violation Record? A. Yes.

Q. You will have to answer affirmatively. **[243]** A. Yes, yes.

Q. Now, is this signed by yourself? A. Right.

Q. And what is the date of that signature? A. Eleven, twenty-four, '69—I mean, I'm sorry, 9/3/69.

Q. Now, do you recall whether or not this was filled out and submitted to the company? A. First of all, this first one here, my car was parked on the street with my four-way

blinkers on, and a car ran into me from behind. That's not a chargeable accident. I wasn't even in the car.

Q. All right. But this was submitted to the company and filled out by yourself and submitted to the company. A. Yes.

Mr. Contreras: No further questions.

The Court: Let me ask Counsel for the government now a question about Mr. McCrimmon.
Why isn't he on your list?

Mr. Fenton: Why isn't he on our list?

The Court: Why aren't you asking some individual relief for him?

Mr. Fenton: Mr. McCrimmon is a member of a class, Your Honor. We are asking for class relief.

The Court: I understand that, but why is **[244]** it you're asking relief for—what is the difference between Mr. McCrimmon and Mr. Holley? My impression is he might even have a stronger case.

Mr. Fenton: Well, Your Honor, we have a series of classes of affected people——

The Court: I recognize that.

Mr. Fenton: ——in this case, and one of the classes are the black city drivers at the Dallas terminal, of which Mr. McCrimmon is one. Now, a class of individuals like these, we are asking they be permitted to bid on vacancies in line driver jobs as they come up, and if they are found qualified for these jobs, to take those jobs on the basis of the seniority they have as city drivers.

The Court: Yes, sir. But that is not my question. I know all that.

Mr. Fenton: Your question is why is he not listed as an individual?

The Court: Why isn't he seeking individual relief? I'm not saying he is entitled to it, I'm just trying to understand your distinction. I recognize him as a member of this class, but here is a man that is employed by T.I.M.E. and made an application and in his testimony he said, well, it's just not our policy to transfer you.

Why is it you're saying he shouldn't have a seniority date on April 12th, 1970, and back pay from, well, from Exhibit **[245]** 146, according to your theory, he would be entitled to back pay from June 11th, [illegible] when they put on another driver, long road haul driver.

Mr. Fenton: Well, Your Honor, as you pointed out last night, quite correctly, at the close of yesterday's session, in many instances individual discriminatees are also members of a class, and we again think correctly that the government is entitled to show individual instances of discrimination——

The Court: I agree with that.

Mr. Fenton: ——from a class, and certainly, we are asking for individual relief for Mr. McCrimmon and others like him as they are within these classes, and what we propose to do——

The Court: In a class action you would afford him relief.

Mr. Fenton: That's right. And along with our proposed findings of fact and proposed conclusions of law, we will set forth these various classes, the exact kind of relief that we think is proper.

The Court: Well, you're saying that you are going to ask for a remedy saying everybody that is in the same class as Mr. McCrimmon be given seniority from the date shown under certain circumstances, something to that effect.

Mr. Fenton: Be allowed to bid on vacancies **[246]** as they come up in order of their seniority, if they are found qualified for these jobs by the company, be permitted to file them.

The Court: You're not asking for any back pay for this fellow?

Mr. Fenton: Yes, we are.

The Court: Thank you. That answers my question. Mr. McCrimmon, I believe that's all the questions they have of you.

All right. Let's have another witness.

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[253] RICHARD STINSON,

called as a witness at the instance of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Fenton

Q. What is your name? A. Richard H. Stinson.

Q. Your address, Mr. Stinson? A. 1927 Eighty-Second Avenue, Oakland, California.

Q. Your race? A. Afro-American.

Q. What is your education, Mr. Stinson? A. High school, one year of college.

Q. Have you ever applied for a job at T.I.M.E.-DC? A. Yes, in '69 when I first heard about the so-called merger.

Q. What kind of a job did you apply for? A. Line driver, sir.

Q. What terminal of the company? A. At the LASME terminal.

[254] Q. What does that mean? A. Los Angeles-Seattle Motor Express.

Q. Where is that located? A. On Ferry Street.

Q. LASME, or Los Angeles-Seattle Motor Express, was that one of the predecessor companies of the present T.I.M.E.-DC? A. Right.

Q. Do you recall about when you applied for a line driver's job at the company? A. Oh, I would say about the third month of '69.

Q. Did anyone else accompany you? A. Yes. A friend of mine, truckdriver, named William Burroughs.

Q. What was his race? A. Afro-American.

Q. Was he also interested in a line driver's job? A. Right.

Q. Who did you talk with when you went to the terminal? A. It's been a long time. I don't know the name, but we got through the receptionist to the so-called line driver supervisor, and we talked to him. I don't know his name. It's been a long time.

Q. What did you ask the receptionist? A. Well, the local that I am in, 468, we don't have a hiring hall procedure, so it's up to you to go out and seek **[255]** your own jobs, so we told the receptionist that we were members of 468 applying for line positions, and she automatically directed us to the line driver supervisor.

Q. Do you recall the line driver supervisor's name, Mr. Stinson? A. No, sir, I don't.

Q. What did you ask the line driver supervisor? A. We had heard about the so-called merger, and that—the possibility that they might need some line drivers, and we were—would like to apply for the position.

Q. Were you given an application blank to fill out for the job? A. No. We were—we were gave a story like we—we was given a story something like they had more drivers than they had equipment, you know. In other words, they had freight, but they wasn't able to move it, what have you, something like this, to this effect, but anyway, we didn't get an application.

Q. Did you after this time inquire again at T.I.M.E.-DC about a line driver's job? A. Yes, in the year of '71.

Q. About what month or what period in 1971? A. Well, I knew that from the word around town that T.I.M.E.-DC was hard to penetrate, as far as the black man was concerned, and the union representative of 468, I asked him would he more or less be a liaison man for myself, so he said **[256]** he would talk to somebody out there. So I talked to him afterward and he said he had talked to them and built me up, what have you, so on and so forth, so I didn't get any calls or what have you. So in turn, I wrote a letter to the terminal manager to bring it to his attention, because I knew it was a definite fact that they didn't have any black line drivers out there. He did not answer my letter.

Q. Who was the terminal manager to whom you wrote, sir? A. Mr. Frazier.

Q. Do you recall about when you wrote him? A. Oh, I would say the middle of 1971, sir, somewhere along in that area.

Q. And after this time did you have any other communications with T.I.M.E.-DC? A. Well, I made a move of my own. I went out there and I talked to a Mr. Foster. He was the truck boss, so-called line driver supervisor, and I took a resume out, see, because I am aware of the problem, what have you, so far as getting an application. I know it's kind of hard sometimes, so I have made up a resume. I gave it to him. I think he was impressed, what have you. We set down and talked for—over the trucking situation, what have you, discrimination, the whole bit.

The fellow seemed to be sincere, but his hands were tied. In other words, he couldn't do anything without contacting so-called Lubbock, so he said that the big time officials were having a **[257]** meeting the end of that week in L.A., and he would have some information for me at that time.

So I was back over there again, and at this particular time he said that they had—they didn't come to any conclusion, what have you. He still didn't know if he could hire or what have you.

I was getting the message, so I called him three different times over the phone and each time it was still a stall, so I finally just gave up more or less.

Q. Were you given a written application for T.I.M.E.-DC? A. Right. He gave me an application, but I had given in turn him a complete resume. Any time he would act as though he was interested in employing me, I was going to follow up with the application.

Q. What did you have in the resume, Mr. Stinson? A. My complete background. I think it would supersede any application that any trucking company would give.

Q. What kind of background do you have with respect to truck driving, sir? A. I spent two years in the Seabees and I come out as an E-4 equipment operator.

Q. What years were you in the Seabees? A. Sixty-one to '63, sir.

Q. Is that part of the Navy? A. Right. Construction battalion.

[258] Q. Do you have an honorable discharge? A. Right.

Q. What kind of equipment did you operate in the Seabees? A. Oh, road and earth-moving equipment.

Q. Then, after you got out of the Seabees, what did you do? A. I worked for Mobil Oil Company as a tanker driver for four years.

Q. What years were those, sir? A. Sixty-three to '67.

Q. What kind of equipment did you drive for Mobil? A. We had truck and trailers and semis.

Q. Did you drive a diesel? A. All diesels.

Q. Did you drive for anyone after that, sir? A. I had a truck of my own for two years, sir.

Q. What kind of a truck was that? A. Five-axle forty-foot box, White Freightliner, diesel.

Q. What years did you drive on your own? A. Sixty-seven to '69.

Q. What were some of the areas that you drove in? A. I had a direct haul for Foremost and McKisson to Apton, which is out of Oakland, California, L.A., California.

Q. Where did you drive to from these locations? A. Well, I was hauling from out of Apton bringing merchandise for Foremost and hauling into St. Paul, going east into St. Paul **[259]** and Milwaukee, going west to Los Angeles or Los Banos.

Q. Now, I believe you testified that you applied first at the company in March of 1969. Did you drive trucks for any other company after that date, sir? A. Oh, yes, yes. I went to work for Acme Transportation, which is a local bulk commodity hauler. I was employed there for two years. In fact, I'd like to bring out that I fought Transcon, which was reinstated, and given three years of seniority because Transcon was so-called doing the same things. There's a lot of trucking firms that are doing that today.

Q. You spoke of Transcon. Did you apply there, sir? A. Yes. In fact, I applied there before I applied at so-called T.I.M.E.-DC, and I worked there. I pulled two trips to Chicago, and then they eliminated me, and the same fellow that they hired--well, they said there was something in my records

that they found, and I knew there was nothing in my records, but it took three years to prove this.

Q. Did you bring some kind of a lawsuit, or a complaint? A. Right, EEOC.

Q. You brought an EEOC complaint? A. Right.

Q. Did you later file a lawsuit? A. Right.

Q. That was resolved? A. Right. That is when they re-instated me three years of **[260]** seniority, and I ran a line for them from the eleventh month to the second month, and the reason that I am not with them today is because they had a change of operations. Transcon redomiciled all their Oakland line driver personnel in Omaha, Nebraska and I didn't want to move to Omaha, Nebraska.

Q. What time did you drive for them? A. I only made two trips when I was first hired in '69, then I worked for them from eleventh month, '71, to the second month of '72. I am unemployed at the present time, now.

Q. Now, when you were driving for Transcon, what kind of equipment did you drive, sir? A. Doubles. They all have——

The Court: What do you mean by doubles, two axles on the rear?

A. (By the witness) Two trailers, sir, and a two-axle tractor pulling two twenty-seven-foot trailers.

Q. (By Mr. Fenton) And a diesel tractor? A. (By the witness) Yes, sir.

Q. Have you ever had any chargeable accidents while driving a truck? A. No, sir. I am proud of it.

Q. Do you have any criminal convictions? A. No, sir.

Mr. Fenton: That's all.

[261] **Cross-Examination**

By Mr. Schuler

Q. Mr. Stinson, I didn't catch the name of the supervisor at T.I.M.E.-DC that you said you talked to in 1971. Was that Mr. Foster? A. Yes, sir.

Q. Do you remember his first name? A. No, sir.

Mr. Schuler: I have no further questions.

The Court: All right.

Mr. Wells: No questions, Your Honor.

The Court: Anything further?

Mr. Fenton: Nothing further questions.

The Court: All right. Mr. Stinson, thank you, sir. You may step down.

Mr. Fenton: Plaintiff calls as its next witness Mr. Grady Amos.

GRADY AMOS,

called as a witness at the instance of the plaintiff, having been first duly sworn, was examined and testified as follows:

[262] **Direct Examination**

By Mr. Fenton

Q. What is your name? A. Grady A. Amos.

Q. What is your address, Mr. Amos? A. 2401 Main Street, Northwest, Atlanta, Georgia.

Q. What is your race? A. Negro.

Q. Where are you employed? A. T.I.M.E.-DC, Incorporated.

Q. In what city, sir? A. Atlanta, Georgia.

Q. What is your job there? A. Tractor-trailer.

Q. Is that also known as a city driver, sir? A. Yes.

The Court: Also known as what? I didn't understand that.

Mr. Fenton: A city driver.

Q. (By Mr. Fenton) What sort of equipment do you drive? A. (By the witness) I drive the same equipment that the line drivers drive. Forty-foot five-axle diesel tractor.

Q. Do you have occasion to drive on the interstate system around Atlanta? A. Yes, I do.

[263] Q. When were you first employed by the company, Mr. Amos? A. I was employed May 1, 1950, which was Southeastern T.I.M.E. purchased Southeastern Motor Truck Line.

Q. So when you were originally employed, the company was called Southeastern. A. Southeastern Motor Truck Lines.

Q. Did T.I.M.E. Freight later take over Southeastern? A. Yes, sir.

The Court: What was that date again?

A. (By the witness) My date of employment?

The Court: Yes.

A. (By the witness) May 1st, 1950.

The Court: Fifty.

A. (By the witness) Yes, sir.

Q. (By Mr. Fenton) What was your first job with the company? A. (By the witness) A helper on a tractor and trailer.

Q. Your next job? A. Tractor and trailer.

Q. About how long after you hired by the company did you become a tractor-trailer driver? A. Approximately between six and nine months.

Q. Were you ever in the service, Mr. Amos? A. Yes, I was.

Q. What branch? **[264]** A. United States Marine Corps.

Q. When was that, sir? A. December, '53, through December—I'm sorry, December '51 through December '53. Two years.

Q. You took a leave of absence from the company to go into the service, is that right? A. Yes, sir.

Q. Did you have occasion to drive while you were in the Marines? A. Yes, I did.

Q. What did you drive there? A. I drove pickups, Jeeps, pickups, gas and diesel semi-tractor and trailers.

Q. Did you have an honorable discharge from the Marines? A. Yes, I did.

Q. Mr. Amos, did you ever apply for any extra road driver runs at T.I.M.E.-DC, or T.I.M.E. Freight as it was known then? A. Yes, I did.

Q. Do you recall approximately when this was? A. It was approximately 1957. It could have been '58.

Q. To whom did you apply? A. I applied to Mr. Wylie Allison, terminal manager.

Q. Were there any other persons who were with you when you applied? A. Yes, there was, or were, rather.

[265] Q. Who are these people, sir? A. Forrest Jones, Roosevelt Derden and Fletcher Foster, which is not with the company. There was Roosevelt Tucker and Joseph Amos and myself.

Q. Were these other persons also city drivers there at Atlanta? A. Yes, they were.

Q. All city drivers working for T.I.M.E. Freight. A. Yes.

Q. Were they all black? A. Yes.

Q. Now, what did Mr. Allison tell you when you inquired about these extra road runs? A. He told us he would have to check the home office in Lubbock, Texas, and I waited two weeks and went back to him and asked him again and he never did tell me what Lubbock said. He told me we would get poor accommodations. We would be forced off the road by other drivers, which was the white drivers, and they would be a bad risk for the company; the company couldn't stand this loss.

Q. Now, at the time you asked Mr. Allison about these extra road runs, were there any white city drivers at the T.I.M.E. terminal making such extra road runs? A. Yes, they were.

The Court: This was in 1957 or '67?

[266] A. (By the witness) 1957 and '58.

The Court: The home office of the company was in Lubbock at that time?

A. (By the witness) Yes.

Q. (By Mr. Fenton) Who are some of the white city drivers who were making extra road runs at that time? A. (By the witness) Jack Morgan, W. A. Boggs, Ernest Ferguson, Freddie Miller, Jessie Goodman, Horace King and Jack Morgan.

Q. Did any of these white city drivers ever transfer and become line drivers at the Atlanta terminal? A. Yes, they did.

Q. Do you recall who these were? A. That was Jessie Goodman, C. H. Butler, Freddie Miller, Ernest Ferguson and Freddie Humphries.

Q. Were you aware of any black city drivers who ever made any extra road runs from the terminal? A. No, there was never any blacks made any road runs.

Q. Now, after your inquiry to Mr. Allison, did you ever again inquire about making extra road runs at the Atlanta terminal? A. Yes, I did.

Q. To whom did you inquire the next time, sir? A. I applied to Mr. George Mise who was the operations manager.

[267] Q. Do you recall when you re-inquired of Mr. Mise about that? A. Yes, sir. It was '66 or '65.

Q. What did Mr. Mise say? A. He told me the same thing that Mr. Allison said. He would have to check the home office and he would let me know as soon as he got a reply, but he never did. I waited again approximately two weeks and went back and asked him again and he said he was still waiting for an answer.

Q. Now, the time you asked Mr. Mise about extra road runs, were any white city drivers at that terminal making these extra road runs? A. Yes, there were.

Q. Did you ever tell Mr. Mise that you would not accept an extra road run to Verona, Mississippi? A. No, I didn't.

Q. Did you ever tell Mr. Allison, the terminal manager, that you would not accept an extra road run to Verona, Mississippi? A. No, I didn't.

Q. Are there any black road drivers at the Atlanta terminal with the company? A. No.

Q. To your knowledge, have there ever been any? A. No.

Q. Do you have any criminal convictions? **[268]** A. No.

Mr. Fenton: That's all.

Mr. Schuler: May I have just a minute, Your Honor?

The Court: Yes, sir.

Cross-Examination

By Mr. Schuler

Q. Mr. Amos, in 1957 or 1958, when you talked to Mr. Allison, what was the inquiry that you made at that time? A. I asked Mr. Allison I would like to make some of the extra road runs and he told me, said, well, in fact, there was a group of us went in——

Q. Well, all right. You have answered the question. You inquired about extra road runs, is that correct? A. Yes.

Q. And when you talked to Mr. Mise, what year was that you talked to him? A. It was approximately '65 or '66. I was thinking it was '66, but——

Q. All right. Did you also make an inquiry to him the same as you did to Mr. Allison for extra road runs? A. Yes, I did.

Mr. Schuler: Thank you. No further questions.

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[281] **ERSKIN LYTLE,**

called as a witness at the instance of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Fenton

Q. What is your name? A. My name is Erskin W. Lytle, Jr.

Q. Your address, Mr. Lytle? A. 3503 Albian Street, Nashville, Tennessee.

Q. What is your job? A. I am a compliance examiner for the United States Postal Service.

Q. How long have you held this job? A. Since 1965.

Q. What are the responsibilities and duties in that job? A. Under the President's Executive Order 11246 and 11375, we have the compliance responsibility for the trucking industry, the railroad industry and the bus companies. Our duties are to schedule regular compliance reviews in these industries, and to see whether or not, and to assist if they are not, these companies to practice equal employment opportunity.

[282] Q. Now, as part of your compliance reviews, did you have occasion to conduct compliance reviews at the Nashville, Tennessee facility of T.I.M.E. Freight, Incorporated? A. Yes, sir.

Q. Do you recall when these compliance reviews took place, sir, generally? A. The first time was about August, 1966, and then again about December, 1966, and I believe we made one in 1967.

Q. Who was the terminal manager at the Nashville facility, sir? A. Mr. K. Neal Gibbs.

The Court: Gibbs?

A. (By the witness) Gibbs.

Q. (By Mr. Fenton) Did you discuss that terminal's compliance posture with Mr. Gibbs? A. (By the witness) Very definitely. After we had the regular amenities that we use when we go in, we did go into discussing with him in his program of equal opportunity, and because of certain items that we asked him to have ready for us when we got there, we were able to take a fast look at the compliance posture of the facility and then we did discuss the total program with him.

Q. What did Mr. Gibbs tell you, sir? A. One of the things that we did notice in the compliance posture was that the minorities that were working at this **[283]** facility were all relegated to one category.

Mr. Schuler: Now, Your Honor, I'm going to move that that question and answer be stricken.

The Court: Let's find out the basis of his knowledge of it, first, before I rule on your objection.

Mr. Schuler: I believe the question was what did Mr. Gibbs tell him and he has stated a conclusion now as to what he found.

Mr. Fenton: I believe, Your Honor, his statement is just an introduction to his——

The Court: Well, go ahead and let me reserve my ruling. We want to keep this within its proper bounds if possible, and I will permit you to go ahead at this time. Overrule the objection at this time.

Q. (By Mr. Fenton) Proceed. A. (By the witness) All right. Mr. Gibbs told me that they had never considered hiring minorities in any other category except the menial type.

Q. Do you recall what job category the minorities were in there, sir? A. Servicemen.

Q. Do you recall approximately when Mr. Gibbs told you this? A. It was during the—it was during the initial review.

The Court: About when was that, middle of '69?

[284] A. (By the witness) Oh, no, no. This was '66.

The Court: In 1966?

A. (By the witness) '66.

Mr. Wells: I am sorry. I didn't hear when.

The Court: 1966.

A. (By the witness) Sixty-six.

The Court: Could you give a little closer date, or do you have that?

A. (By the witness) I visited them twice in 1966. The first time I think it was August and the second time I believe it was December.

Q. (By Mr. Fenton) Did you have occasion to reach an oral understanding or an oral agreement with Mr. Gibbs with respect to the minorities who were employed at that terminal? A. (By the witness) Yes.

Q. What was that, sir? A. I asked him if he would consider and would he agree to re-evaluate the minorities that were presently working at the facility, and at the same time seek minorities to work in all job categories at this facility, and he agreed to do so.

Q. And did you later discuss this agreement with Mr. Gibbs? A. During the second visit I did discuss it with him, and he told me at that time that he had been informed by Lubbock just to let that agreement alone, but I had not been notified **[285]** of that.

Q. You say he was informed by Lubbock just to let that agreement alone? A. Yes.

Q. Could you elaborate on that, sir? A. Well, in our—during the review and in all of our reviews we do try to bring about agreements in which we ask them if they will do this, will you agree to do this, or whatever it is, and at that time the two that we asked was that he would re-evaluate the minorities that appeared to be relegated to one category, and then second, take affirmative action in seeking minorities to work in all categories, and he agreed to do so when I did ask him about it, and he told me about it. Then I didn't know anything about it, but I still continued to ask him if he would if it became possible.

Q. Right. And when you had your conversation with him after you entered into this agreement or understanding, did he tell you that the agreement would be effectuated, sir? A. He told me that. He did.

Q. Yes. And did he tell you anything after that with respect to that agreement? A. He only told me that Lubbock had told him to let that agreement alone.

Q. And what did you understand him to mean by that?

Mr. Schuler: Your Honor, I object to that **[286]** question. I don't believe this witness' understanding is material to the issues in this case.

The Court: Well, I don't think it is necessary to ask the question. I think the answer he has given is obvious, so I am going to sustain the objection.

Q. (By Mr. Fenton) Well, let me ask you this: After Mr. Gibbs told you that, was that agreement carried out, sir, to your knowledge? A. (By the witness) It was not carried out. The minorities that were working continued working in that category and I do know that they were not called in for any type of re-evaluation.

Mr. Fenton: No further questions.

Cross-Examination

By Mr. Schuler

Q. Mr. Lytle, I believe you said your last contact with Mr. Gibbs was in December of 1966? A. I said the last review, but I also said that we went there again in 1967.

Q. And about when in 1967 was that? A. I believe it was the early part or possibly the middle of 1967. I'm not sure, because there were three of us that went in at that time.

Q. Have you had any contact with Mr. Gibbs or anyone else there since the early or middle part of 1967? **[287]** A. Not personal, not personal contact with him. I have had contact by the telephone. They have called me once or twice on the telephone, and he has written me one or two letters since that time.

Q. Are you aware of any contacts that have been made by the T.I.M.E.-DC terminal in Nashville since the early part of 1967 to minority referral sources? A. On one of his calls he stated to me that he had made contact and was in need of some

minority employees, or in need of employees; that he wanted to hire a minority.

Q. You said that the agreement that you reached with Mr. Gibbs was not carried out. Are you aware that there have been contacts since 1967 by the Nashville terminal with minority referral sources and efforts made to secure additional minority employees? A. I do know that since that time letters have been written to some minority referral sources.

Q. And you received copies of some of those letters, did you not? A. Yes.

Q. When you first talked to Mr. Gibbs as to whether he had minority employees in categories other than servicemen, did he tell you that they had never considered minorities for those other categories, or did he tell you that he had never had minority applicants for those other categories? **[288]** A. He told me they had never considered minorities for any other category except service.

Q. Did you follow up and ask him if he had had minority applicants for those other categories? A. Very definitely.

Q. Did you have any discussion as to when there had been minority applicants, or what categories of work they had sought? A. We discussed it, yes, and it was brought out at that time that in reality there were no minorities working under Mr. Gibbs. All of the minorities were working in the mechanic shop under Mr. Burns, so he had not made any effort to hire minorities in his shop at all.

Q. Well, that is your conclusion, Mr. Lytle. A. That is the——

Q. Isn't it your conclusion that he had not made the effort? A. He discussed it with me. He told me that.

Q. Now, did you get into any discussion with Mr. Gibbs as to whether minorities had applied for jobs and had been tested as to qualifications for those jobs? A. No, sir.

Q. You didn't get into the qualifications? A. I asked him about those things, but he said it had not been done. He told me that Mr.—Mr. Gibbs told me that it had not been done.

[289] Q. There had not been any qualifying of potential applicants? A. Yes, sir.

Q. Did Mr. Gibbs state anything further to you as to any reasons there might have been for not hiring minorities in categories other than servicemen? A. They hadn't considered them for any other category.

Mr. Schuler: Thank you. No further questions.

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[314] The Court: Thank you, Mr. Henry.

Now, sir, anything else at this time before we recess until Tuesday morning?

Mr. Fenton: Your Honor, our next intention would be to start with the depositions, and it is entirely acceptable to us if you want to wait until Tuesday for that.

The Court: I would prefer to do that. I think this is a natural break in this trial, if no one else has any objection.

Now, let me say that I have gotten the numbers of these exhibits, and that these are the agreed summaries that I have here. I intend and understand with consent and even the suggestion of Counsel that I examine and study and read these outside of open Court, which I intend to do this weekend. Did you file some more other than those that were originally sent me? The stack I have here was sent me originally by mail, **[315]** or handed me while I was at the Judicial Conference last week. Are there any more of them?

Mr. Fenton. We filed a total of nineteen, Your Honor. I don't know if you have them all there or not.

The Court: Well, I want to be sure I get them all. I have nineteen.

Now, I recognize there are other depositions, and I believe the government at the commencement of this trial indicated that you would want to present some here in open Court and then if you move into those, perhaps you can come at me later, say, look, the rest of these you can examine in Chambers, or something, so won't go into those depositions at this time. I think this is enough, or all I want to examine unless you have a suggestion to the contrary.

Mr. Fenton: Fine. Possibly an acceptable procedure in presenting the rest of the depositions, what we propose to do is identify our designations of individuals and if there are no objections by the defendant to that particular deposition and the exhibits which were identified through it, to just submit it and go into the actual reading of only those depositions, or parts thereof, where there are actual objections. We think that might speed things up.

The Court: That's what I had contemplated. Does that comport with your idea?

Mr. Schuler: Well, Your Honor, our last **[316]** meeting of a pre-trial nature, we had understood that the depositions would be read, and accordingly, we do not have a deposition-by-deposition list of the specific objections in each of the depositions. We can possibly go through and do that at least partially prior to Tuesday. The problem is that there are some questions that were asked in the depositions where we feel the witnesses made an unresponsive answer, and we had no grounds for objection to that upon the deposition record.

The Court: I understand. Let me ask you this: You are going to read some, and that is going to at least take a day, will it not, those that you intend to read?

Mr. Fenton: Well, Your Honor, we don't intend to read any, but if that is the only acceptable way——

The Court: No, no, no, no, it isn't. I just want to give Counsel time to—he's not going to read any, but you know what he's going to tender, don't you?

Mr. Schuler: Well, I assume that they will be tendered in the order that they were taken. First, the San Francisco depositions, Denver and then——

The Court: I would assume he probably will go in the order that he has listed them in the pre-trial order.

Mr. Fenton: That's correct.

Mr. Wells: If Your Honor please, might I **[317]** make a suggestion as to a problem that at least we, as defendants have, unless there is some reading or at least some pinpointing, the first name that Counsel puts on this list of persons for whom he is seeking relief is a fellow named Benny Whitfield out of San Francisco. Now, Mr. Whitfield gave a deposition and as far as I'm concerned the objections, if any, will be mine, or that the union will make. I don't know what the company will make, and it might be proper just to hand you Whitfield's deposition, but I must say that as I read this top side or bottom I can't see what possible basis the government has for seeking a seniority date of February 4th, 1969.

Basically, what this deposition says is that the man applied for a job and he didn't get it. Now, when something like that came up this morning, you asked Counsel to point up just what was it that he was after, and seems to me that unless—that if they are just dumped in there wholesale, we are just shooting blind from the defensive side. We don't know what he is after or what his theory is.

Mr. Fenton: Well——

The Court: That's understandable, Counsel. How can you remedy that?

Mr. Fenton: I will be happy to explain our theory at any time with respect to Mr. Whitfield.

Let's take him for example. He applied at that terminal——

The Court: Well, wait, let's talk about **[318]** the procedure on this.

How are we going—I can see his standpoint. Would it be helpful if when they introduced Pages 4 through 8 of Mr. Whitfield, or whoever, he states the purpose for which it is offered at that time and give you gentlemen a chance to make any objection, or you say I don't have any objection, and when we get to those that you have got some objections, then can only be ruled upon by hearing the testimony and we will just read that particular deposition.

Now, the bulk of those you're not going to have any objection to, or some of them, isn't that correct?

Mr. Schuler: I think that's correct, Your Honor.

The Court: Well, could you inform Mr. Fenton which ones you think ought to be read and which ones you think can be examined by the Court in Chambers? Do that sometime between now and Tuesday, or Tuesday morning, or do you want to work this weekend?

Mr. Schuler: Well, I think your suggestion is perhaps better, that Mr. Fenton might first advise us as to the purpose to be served by any particular deposition and——

The Court: You mean have him advise that this is offered for the proof of a certain claim in this lawsuit.

Mr. Schuler: Yes. Some of the unresponsive **[319]** answers, or the hearsay that we say exists, might not have any meaning if he is not offering the deposition for a purpose that would be served by that hearsay evidence.

The Court: Well, I think Mr. Fenton is ready in each instance to tender a deposition, tell you precisely what he is tendering it for.

Mr. Fenton: In most instances, that is true.

The Court: Could you do that?

Mr. Fenton: There are certain depositions of company officials where there are many purposes for which we tender. It would take some time to summarize all those purposes, but for those people that we are tendering depositions whom we consider discriminatees, representative of a class, certainly we could do that.

The Court: We are going to start out Tuesday and I'm going to permit Counsel for the government to tender depositions or portions thereof, and at the time it is tendered, give a short statement of the purposes, and Counsel can then make their objections and can make a request that it be read rather than examined by the Court in Chambers, and we will just go deposition by deposition like that. When you say it ought to be read, well, I think we will just have that portion of it read, but this will cut a considerable amount and give us some shortcuts.

[320] Is that going to cause any extra burden on you, Mr. Fenton? I think you indicated that you are well versed on the facts of this case.

Mr. Fenton: Well, I don't know about that. It may involve a little work this weekend, but this is an ideal environment to do it in.

The Court: You're not going to be outside swimming.

Mr. Fenton: That's right.

The Court: Let me go into another thing here.

We had a discussion in chambers this morning which was off the record, and this may look a little disjointed in the record, but I feel that there is nothing wrong with me keeping you up with my feeling in this case, because each party certainly keeps me up with their positions on the various aspects of this case.

Now, I am referring particularly to the discussion we had about a possible remedy in connection with the practice concerning the transfer from the city driver unit or classification to

the long haul or the road driver classification, and the seniorities to be afforded there.

Now, before I go further, I want it clearly understood that I don't intend to make any ruling or final decision in this case preliminary to hearing all of the evidence in the case, **[321]** but since we have had this discussion, let me say that I have examined the three cases again. I have already read them, but I read them over carefully during the lunch hour. Those cited by the government, as I understood it, supported your intention that a remedy should be afforded in this particular instance where minority groups, under the decree, would be transferred from the lower classification to the higher, city to road unit, and given preference over a transfer—any transfer that the whites might be entitled to. In other words, the blacks would go to the top of the list, even though the dates of employment and other pertinent dates or qualifications and so forth of a white might entitle him on the record to a higher classification.

In other words, just to put it bluntly here, you are asking for a decree that would, because of the past alleged historical discrimination in this area, make up for it now by giving the blacks an extra job, and my terminology would be perhaps discriminating against a white in that category.

Now, I have read those cases carefully, and I do not find that any one of those three cases, that is, the Mercury Freight Line case, the Lee Way case and the Roadway case, I don't find that any of those three cases require such a decree to be entered. In fact, I don't think they address themselves to that problem. One of them, I believe the Jones case, even expressly refused to handle certain seniority problems. I don't even know as the question was raised in those cases exactly as **[322]** it would be raised here if such a decree were to be entered. I think maybe it could be argued that even those cases do not require it. They were so broad in their language that they might permit it in the ordinary discretion. One of them specifically cited, I think

it was the Jones case, cited Title 42, 2000(e)2(j), I believe it is. That's the one, as I read it, that says two wrongs, that is, two discriminations do not make a right. That's the way I look at it.

Now, I say this, Mr. Fenton, because as I understand it, you are very firm in insisting that that is the proper remedy, and I want you to give me some more cases. You haven't persuaded me yet, so if you have some more, bring them to my attention the first of the week, will you?

Mr. Fenton: We will certainly do that, Your Honor. I refer you again to our pre-trial brief, which we submitted in this case. Now, it's true, as you have stated, that the three trucking cases, which have been decided by Federal Courts of Appeal, that is Jones against Lee Way Motor Freight, Benning against Roadway, and Witherspoon against Mercury Freight Lines, did not involve the issue of what seniority relief, if any, minorities who seek to transfer from one job classification to another, are entitled to. They involved only a no-transfer policy. However, cases in numerous other industries have indicated that seniority carry-over is the proper relief.

[323] The Court: I misunderstood you this morning. I thought you said these three cases supported that.

Mr. Fenton: No, sir. But there is a District Court case which was decided which involved a trucking company, and that is the United States against Central Motor Lines, which was decided——

The Court: That was attached to your trial brief, was it not?

Mr. Fenton: That was attached to our trial brief. So far it hasn't been reported in Federal Sup., but it soon will be. In that case the Court specifically ordered this kind of relief, and in consideration of the fact that there are numerous appellant decisions in other industries where this kind of relief has been ordered, you've got that District Court decision following those cases, and we think that this is what Title 7 requires, and that is what we are asking for.

The Court: I'm going to give every consideration to your position in that regard. I find it hard to believe that they require it. They might. About as far as I can go is that it would authorize it, but again, I am not making any decision. I just am giving you a tip as to how I feel on it.

We're going to be ready to go again, say, Tuesday at nine. Anybody got any problem with 9:00 Tuesday?

[324] Mr. Wells: No.

The Court: All right. We will go along the outline that we talked about a moment ago concerning the depositions at 9:00 in this case.

We'll stand in recess until that time.

(Court adjourned for the day.)

Lubbock, Texas, May 9th, 1972
9:00 A.M.

The Court: Gentlemen, the nineteen summary exhibits, summary of depositions exhibits, of course, are in evidence. I wanted you to know that I have now read each one of those nineteen, and will consider them as part of the evidence in this case.

Now, is the government ready to proceed?

Mr. Fenton: Yes, we are, Your Honor.

The Court: All right, sir.

Mr. Fenton: At the close of the Court session on Thursday it was agreed that plaintiff would submit a list of purposes for which it intends to offer the other depositions in evidence, and we prepared this list and furnished copies to Counsel for the defendants.

[325] The Court: Thank you. I think that will be most helpful. Let the clerk file one.

Thank you, sir.

Mr. Fenton: We tender them in evidence.

The Court: Counsel for the defendants have one, I presume?

Mr. Schuler: Yes, sir.

The Court: Well, I presume what you want to do now is go right through and just introduce these and I believe we had an understanding that you could read them if you desire, or if defendants requested that they be read at this time, either one, you would do it, otherwise, they'd just be submitted to me for my examination. Is that correct?

Mr. Schuler: I believe that is it, Your Honor. We will wait and see what the position of the Justice Department is.

Mr. Fenton: Your Honor, our position is that we will just submit the depositions rather than read them.

The Court: Well, I think I'd prefer that, but I believe I have indicated to the defendants if there is any one of these that they want to have read in Court that they can make their objections, or whatever at that time. I would permit them to so state and we will read them.

Mr. Wells: May I make an inquiry?

Your Honor will recall that not all the depositions are **[326]** offered, only specified parts as attached to the pre-trial order, and I take it that that is all that is being offered now.

The Court: That's what I would assume. Is that right?

Mr. Fenton: That's correct, just those designations which are set out in the pre-trial order from Pages 34 to——

The Court: That's the way I understood it.

Mr. Fenton: ——39.

Mr. Wells: Your Honor, the other question that I had, please, is it anticipated that the court reporter will copy those portions in the record, or what will constitute the record here?

The Court: My feeling is that officially the record will only constitute these pages that are offered. Now, as to the mechanics of it, I would expect that the Appellate Court is going to require that the court reporter copy just those portions rather than submit them the entire depositions. That's my feeling on it. I would think that if Counsel wanted to stipulate otherwise, that that might be acceptable, but right now I am just thinking that—let's just take Albert M. Lamboy, the first deposition here, I am assuming that the government will now move to have his testimony on the specified pages, whatever they are in the pre-trial order, admitted into evidence. Counsel for defendants say, well, **[327]** that's fine, we've got no objection, go ahead and I'll read it when I can. If you have an objection to it, or want it read in the record, just so state and the government Counsel will have to do so.

Now, are you prepared to do that right now, or is this going to put too much pressure on you to do it in that fashion?

Are you familiar enough with them to do it at this time, or do you want some time to examine it?

Mr. Schuler: I think we are prepared to do that at this time, Your Honor.

The Court: All right.

Mr. Schuler: I may want—there are a couple of places where we have taken depositions where I would like to confer with co-counsel for a moment. Los Angeles is one and Denver is another.

The Court: Sure.

Mr. Schuler: When we get to those, I might like to take a minute.

The Court: Let me know and we will take a recess, anything that will expedite it.

Mr. Fenton: Your Honor, I would like to make a suggestion. I don't know what Counsel for the defendants would think

about it, or if they have thought about it, but in the interest of possibly saving some money in preparing the transcript in these actions, that it would be **[328]** acceptable to the government if we just considered the depositions themselves as part of the record; that is, those designated portions, and consider the designated portions as exhibits rather than have the reporter retype that particular thing into the record.

The Court: Well, I would certainly have no objection. Isn't that something we can cross at a later point there?

Mr. Wells: In that connection, are the depositions that are before the Court, is there some marginal notation as to where you stop and where you start?

The Court: Well, I'll tell you how I'm going to handle that. When he introduces them, I'm going to have the clerk hand me that deposition and I will ask Mr. Fenton to refer to the pages so I can mark in pencil on the outside what pages and lines there are and I will have that reference to go by when I read them.

Mr. Fenton: Fine.

The Court: Now——

Mr. Wells: Well, on that basis and with that record, I would have no objection to the government's suggestion that they be treated as exhibits rather than be recopied.

Mr. Schuler: I would agree with that, Your Honor.

[329] The Court: All right. We'll just see that it is done that way.

All right. Mr. Fenton, what line and page on this Lamboy, is that the correct pronunciation of the deposition?

Mr. Fenton: Plaintiff first offers in evidence designated portions of the deposition of Albert M. Lamboy, Pages 3 through 5, and on Page 5, Lines 1 through 24. Then, Page 17, Line 16 through 25, through Page 25, Line 1 through 19.

I'd like to state at this time that concurrently with the offering of the deposition we will also offer in all exhibits which may have been identified through individual deponents which are also set out in the pre-trial order.

The Court: Now, are those exhibits attached to the depositions?

Mr. Fenton: They are not attached physically, Your Honor. They are in a separate exhibit packet.

The Court: All right. I'll have to have those, of course, for the depositions to make any order of sense, will I not, when I examine them?

Mr. Fenton: Yes.

The Court: Well, I will so do.

Mr. Wells: If Your Honor please, at the risk of delaying slightly, I wonder if Counsel will go slow enough so that we can mark our copies of the deposition as he **[330]** goes.

The Court: That's fine.

All right. Have you got the Larson deposition there?

All right. Let's go ahead. Now, if there is no objection from Counsel, those pages and lines as indicated by Counsel for the government will be in evidence, and I will examine them out of the presence of Counsel in Chambers.

Mr. Schuler: All right. And Your Honor, I suppose the easiest thing would be for us to tell you right at this time those portions of the same deposition that we want you to examine on our behalf.

The Court: All right, sir. Yes, sir.

Mr. Schuler: As we have listed it in the pre-trial order, we would like to rely on Page 32 of Mr. Lamboy's deposition, starting at Line 15, and going to the bottom of the page. And then, going over to Page 40 through Line 8.

The Court: That is 32 through 40 inclusive then.

Mr. Schuler: That's right.

The Court: Through Line what on Page 40?

Mr. Schuler: Through Line 8.

Then, again, on Page 44, start with Line 2, go through the end of that page, and inclusively through Page 54, Line 11.

The Court: All right, sir.

Mr. Wells: May I have just a moment?

[331] The Court: Yes, sir.

Mr. Schuler: Your Honor, may we be off the record a moment?

The Court: Yes, sir.

(Discussion between Court and Counsel off the record.)

The Court: All right. Now, is that all we need on the Lamboy deposition from all the parties?

All right. Let's proceed on the George Larson deposition.

Mr. Fenton: Plaintiff offers in evidence designated portions of the deposition of George Larson, Page 3 through Page 6, Line 19 on Page 6.

The Court: All right, sir.

Mr. Fenton: Then, on Page 8, beginning on Line 22 through Page 10, ending at Line 15.

The Court: Line 15?

Mr. Fenton: Right.

The Court: All right, sir.

Mr. Fenton: Then, starting on Page 11 at Line 19 through Page 14, ending under Line 17.

The Court: All right, sir.

Mr. Schuler: Your Honor, for T.I.M.E.-DC we would like to rely on Page 6, commencing at Line 20 and continuing over to Page 8, ending with Line 21; on Page 14 commencing on Line 7, continuing over to Page 19, ending with Line 11.

[332] The Court: All right, sir.

Mr. Schuler: That concludes our marking for Mr. Larson.

The Court: Anything further on Mr. Larson's deposition from anyone?

All right. Let's go to Mr. Elsner.

Mr. Fenton: With respect to Mr. Elsner's deposition, plaintiff offers in evidence Pages 3 through Page 7, ending at Line 21.

Mr. Schuler: We would like to rely on Page 10 starting at Line 20, continuing through Line 6 on Page 14.

The Court: Anything further, gentlemen, on the Elsner deposition?

All right. Bennie Whitfield, I believe, is next.

Mr. Fenton: On the Bennie Whitfield deposition, plaintiff offers in evidence Pages 3 through 18.

The Court: The defendants?

Mr. Schuler: We have nothing additional, Your Honor.

The Court: All right, sir.

Mr. Wells: Just a moment, Your Honor.

The Court: Yes, sir. If you gentlemen prefer to sit down while we are doing this mechanical work, well, feel free to do so. Whatever is most convenient for you.

[333] Mr. Schuler: It's easier to stand up for this.

The Court: All right. That's fine.

Mr. Wells: I have nothing further on Whitfield.

The Court: All right. We're ready to go to George W. Sullivan.

Mr. Fenton: On George W. Sullivan's deposition, plaintiff offers in evidence Pages 3 through 18, Line 1, and then at Page 23, beginning at Line 2 through Page 24, ending at Line 19.

The Court: All right. The defendants?

Mr. Schuler: Page 24, commencing at Line 21 and continuing to Page 31, ending at Line 13.

Let's see, yes, that is correct.

Mr. Wells: I would add to that, Your Honor, Page 31, Line 22, through 32, Line 19.

The Court: All right.

Mr. Fenton: Plaintiff next offers——

The Court: Wait a minute. There may be just a little more there.

Mr. Wells: Your Honor, please strike that conclusion. I would carry it all the way through to 35, Line 18.

The Court: All right. For the record, **[334]** I am just writing on the fly sheet of each of these depositions the pages and lines as you have designated here. I know it is repetitious to the pre-trial order, but the record will reflect that is what these notations are. I will use them as a reference when I commence the reading of these depositions themselves.

All right. Now, Mr. Edward Titus' deposition.

Mr. Fenton: From Mr. Titus' deposition, plaintiff offers in evidence Pages 3 through 6, ending at Line 23 on Page 6.

The Court: Further, I am putting two columns, one for the plaintiff and one for the defendants, as a designation so I will know which parties are tendering these portions of depositions.

Anything else from the government on that?

Mr. Fenton: That's all.

Mr. Schuler: T.I.M.E.-DC has nothing to add there, Your Honor.

The Court: That's all from the defendants then.

All right. Mr. Otis Zeno.

Mr. Fenton: With respect to Otis Zeno, plaintiff offers in evidence Pages 3 through 7, ending at Line 12 on Page 7.

Then, starting again on Page 23 at Line 23, going through Page 34, ending at Line 23.

[335] The Court: All right, sir.

Mr. Schuler: We would like to add Page 14, Lines 17 to 25, continuing over to Page 21, ending at Line 22. And also, on Page 40, commencing at Line 5, continuing through that Page and on over to Page 62, ending with Line 2.

The Court: All right. Does that complete it for the defendants of Mr. Zeno?

Reuben A. Garcia.

Mr. Fenton: With respect to Mr. Garcia, plaintiff offers in evidence Pages 3 through 9, ending at Line 19, and starting again at Page 23, line 15, and going to Page 24, ending at Line 12.

The Court: From the defendants?

Mr. Schuler: Page 24, Lines 15 to 25.

The Court: All right. Is that all from the defendants on Mr. Garcia?

Mr. Fenton: Mr. Angelo——

The Court: Mr. Roy M. Angelo.

Mr. Fenton: From Mr. Angelo's deposition plaintiff offers in evidence Pages 3 through 6, and then on Page 21, beginning at Line 16, to Page 22, ending at Line 11.

On Page 23, beginning at Line 16, going through to Page 26, ending at Line 20.

Page 34, beginning at Line 9, going to Page 42, ending at Line 22.

[336] On Page 45, beginning at Line 19 and going through Page 46, ending at Line 13.

The Court: All right, sir. The defendants?

Mr. Schuler: Page 32, starting at Line 2 to the end of the page, and ending on Page 33 at Line 12. Also——

Mr. Wells: Excuse me, Mr. Schuler. I didn't get that.

Mr. Schuler: From Page 32, Line 2 to Page 33, ending at Line 12. And from Page 49, starting at Line 22 to Page 51, ending at Line 18.

The Court: Anyone else have anything further on the Angelo deposition?

All right. Mr. Carlton King's deposition.

Mr. Fenton: On King's deposition, plaintiff offers in evidence Pages 3 through 7, ending at Line 5, and then Page 14, Lines 19 through 23.

The Court: From the defendants?

Mr. Schuler: We have nothing further to add there, Your Honor.

The Court: Mr. Wells, do you have anything?

All right. I believe that takes care of the San Francisco depositions, does it not?

Mr. Fenton: It does, Your Honor.

[337] Mr. Wells: If Your Honor please, it may slow down a little bit, but we have just received this purposes for which they are introduced this morning, and I would like at the end of each city five minutes to check that against what is here.

The Court: Let's catch up as we go along. I want to say I recognize the voluminous and detailed work the attorneys have done in this matter, and I assure that I intend to take advantage of it by reading these very carefully. You've taken all of the chaff out of it and it's going to be most helpful.

I'll tell you what, let's take ten minutes and you can look at Denver while you're at it. I've got a phone call that needs to be made and let me tend to that.

When you gentlemen have had a chance to examine San Francisco and Denver, well, send word to the bailiff.

(Recess)

The Court: All right. Gentlemen, let's proceed. I believe the next deposition is Roy Wilson, Roy M. Wilson in Denver, right?

Mr. Schuler: Your Honor, if we might, I'd like to go back for a moment. I saw a typographical error as to the deposition of George Sullivan in San Francisco.

The Court: All right, sir. What page?

[338] Mr. Schuler: I believe it is Page 24. Let me check that. Now, let's see, I did find one. I'll have to come back to it. That's not the correct page. As we get into the depositions for Denver and Los Angeles, we are going through to mark the specific objections as to a number of them, and that was the reason for the delay during the recess.

Generally speaking, there are many statements in these Denver and Los Angeles depositions, particularly, and generally, throughout all the depositions as to the opinion of the deponent as to the reputation of T.I.M.E.-DC in the minority communities, and we would make a general objection as to every such reference in every deposition, since it's obvious that the person being deposed is speaking for himself and has not been qualified to give an opinion for the entire community.

The Court: Now, what you're doing—saying here is that you have got these witnesses, deponents, who are employees of

T.I.M.E. and they have been asked their opinion as to the representation of this employer concerning employment of minorities, and they give such an opinion, and there is no qualification, they have made no study or have any expertise in that particular field.

Mr. Schuler: That's correct. And it is their personal opinion and it is doubly suspect because many of the people who are making the statements have made individual charges of discrimination against T.I.M.E. They are either **[339]** individual discriminatees or have filed an EEOC charge or are listed as members of a class of discriminatees.

The Court: Let me hear from the government and see why they think such testimony is admissible.

Mr. Fenton: Your Honor, with respect to those particular deponents on which we are offering this testimony, they were asked as a foundation, as a member of the black community or as a member of a Mexican-American community, what is the reputation of T.I.M.E.-DC for hiring blacks or for hiring Mexican-Americans, so the foundation was laid. Secondly——

The Court: Wait a minute. What kind of foundation is laid there? I don't follow you.

Mr. Fenton: That they are a member of a minority community.

The Court: That makes them an expert?

Mr. Fenton: Your Honor, in this particular area for this particular purpose, they are expert witnesses. They are testifying as a member of a minority community.

Now, there are many cases under Title 7 which hold that the reputation of the defendant is admissible for purposes of showing its compliance or non-compliance with Title 7.

The Court: That's not the point, whether the reputation is admissible. It is the character of the witness himself as being

qualified to give the reputation is the point made by Counsel for the defendant.

[340] Mr. Fenton: That's right. The foundation was laid, i.e., that is they were asked as a member——

The Court: All right. You're saying reputation is admissible and that the witness being a member of a minority race is entitled to give his opinion as to that reputation.

Mr. Fenton: That's correct.

The Court: All right, sir. Anything further?

Mr. Fenton: I could cite some cases, Your Honor.

The Court: Whereby being a member of a minority race you are qualified to give an opinion in evidence?

Mr. Fenton: That's correct.

The Court: Let me have them. Let me just have the——

Mr. Fenton: Excuse me a moment. Let me get some of those cases.

The Court: It's, of course, contrary to the general rules, but we are in a new field of law. I am willing to look at the cases.

Mr. Schuler: Your Honor, while Mr. Fenton is getting those case citations, I would like to take issue with his argument that foundation was laid in each case. It is my recollection from the depositions that a foundation was **[341]** not laid in any case that I can recall, and I have taken at random the deposition of Edgar Cornelius Rudison in Los Angeles, and on Page 11 there is a question, "That is the same equipment that road drivers drive," and the answer, "Right." Then Counsel goes right into the reputation question with this question: "Mr. Rudison, what is the reputation of the company in the black community with respect to hiring blacks," and the answer is, "I would say that it has been poor."

There is no foundation laid as to Mr. Rudison even living in the black community or that he has made a study or that he is in any way qualified to give such an opinion.

The Court: Do you agree with his proposition of law that as long as the witness is a member of a minority race he is qualified to give expert opinions?

Mr. Schuler: I don't agree with the legal proposition, and I don't agree with Mr. Fenton's statement factually that a foundation was laid.

The Court: All right. Let me have his cases and I'll reserve the ruling on this. I'm going to go ahead on the procedure of tendering these into evidence and I'll rule on it later.

Mr. Fenton: Your Honor, the appellant case that I'd like to cite to the Court is United States against Sheet Metal Workers Local 36, and that is the case which was decided by the Eighth Circuit in 1969.

[342] The Court: What is it, do you have——

Mr. Fenton: I'll have that in a minute.

The Court: All right. Would it be helpful if we just—Do you find it there?

Mr. Fenton: That is in 416 Fed. 2d 123.

The Court: All right. Would you get that volume, 416 Fed. 2d.

Mr. Fenton: Then, I'd like to cite——

The Court: Wait a minute.

Now, this is on the proposition of an expert witness. I want to focus on the point here.

Mr. Fenton: This is on the proposition that reputation evidence is admissible.

The Court: Well, that is not the point, Counsel, so don't hand me a bunch of these cases that are straying off the point. The point is may a member of a minority race, does that make him per se qualified as an expert to give an opinion.

Mr. Fenton: Well, Your Honor, I can tell you from reading the transcript of certain cases——

The Court: I want the cases.

Mr. Fenton: ——that this occurred in those cases. Now, that particular——

The Court: What case do you have that you want to cite to me as a proposition——

[343] Mr. Fenton: Morrow against Kisler.

The Court: What is the citation?

Mr. Fenton: It's not reported yet in Fed. Sup., Your Honor. I would have to——

The Court: Bring me 416. If it upholds it, I'll sustain it. Otherwise, I'm going to use that case. That's the only one, U.S. versus Sheet Metal Workers?

Mr. Fenton: In Morrow versus Kisler, which was a suit against the officials of the State of Mississippi over alleged discrimination of race in the Highway Patrol. Black witnesses were put on to testify as to this very thing, and objections were raised and these cases were cited to that Court. That is a Federal District Court in the Southern District of Mississippi, Judge Nixon presiding, and Judge Nixon permitted that kind of testimony. And also in the case of NAACP and United States against Allen and Frazier, which is alleged discrimination because of race against the officials of the Alabama Highway Patrol, and the case was decided by Judge Johnson in March of 1972. The same issue was raised and Judge Johnson permitted members of the black community to testify as to the reputation of the Alabama Highway Patrol for hiring blacks in the black communities.

The Court: This is an employment case?

Mr. Fenton: That's correct.

The Court: You don't have a citation on **[344]** it? That's just a recent case?

Mr. Fenton: Both recent cases, Your Honor. To my knowledge, they haven't been reported in Fed. Sup., but I can furnish our——

The Court: Well, let's take a look at the 416 Fed. Sup. case. Have you got a particular page where I can go right to it?

Mr. Fenton: If I can find my copy again, Your Honor.

Your Honor, if I could refer you to Page 132 of that decision, and to the first paragraph, the Court there is discussing the case before it, comparing it with other Title 7 cases. The Court says, "We recognize that each of the cases cited in Note 15 to support our position can be distinguished on the ground that in each case a number of known members of a minority group had been discriminated against and after the passage of the Civil Rights Act. Here, we do not have such evidence, but we do not believe that it is necessary. The record does show that qualified Negro tradesmen have been and continue to be residents of the area. It further shows that they were acutely aware of the locals' policies toward minority groups. It is also clear that they knew that even if they were permitted to use the referral system and become members of the union, they would have to work for at least a year before they could move into a priority group which would assure them **[345]** reasonably full employment. In the light of this knowledge, it is unreasonable to expect that any Negro tradesman working for a Negro contractor or a non-construction white employer would seek to use the referral systems or to join either local."

The Court: Yes, sir. What is the point?

Mr. Fenton: The Court there is giving explicit approval to reputation evidence.

The Court: Where is one word, one sentence, one phrase, that says anything about reputation evidence in what you just read to me, Counsel?

Mr. Fenton: It says that the blacks were acutely aware of the policy of the unions.

The Court: I don't dispute that. We are not talking about what they were aware of. We're talking about what their opinion was as to a reputation.

Mr. Fenton: Well, Your Honor, that seems to me clearly to be——

The Court: Well, Counsel, I'm going to sustain it, the objection. I'll read the deposition, of course, and anything on opinion evidence that doesn't have a proper foundation, the evidence will not be considered.

Mr. Fenton: Your Honor, we'd like to make a formal proffer of all that kind of evidence.

The Court: All right. You may write it and file it with the clerk.

[346] Let's go.

I thought you had a case on point, Counsel. I'm disappointed.

Mr. Schuler: Your Honor, this might be an appropriate time to raise another general type of objection that's going to come up in the Denver depositions, and the Los Angeles depositions particularly.

The Court: All right.

Mr. Schuler: And in many other places.

The Court: My ruling was I am going to read these depositions in full, but I will exclude those that have opinion evidence without the proper foundation being laid for the witness to give that opinion evidence.

Excuse me. Now, go ahead, sir.

Mr. Schuler: There is a great deal of testimony in the depositions that is objectionable, both because it relates to incidents of alleged discrimination prior to the effective date of the Act on July 3rd, 1965, and also, because it is generally remote in time, and there are numerous instances of alleged activities in 1955, '57, and so on, that we say generally are too remote.

And secondly, the purpose of the Act indicated that there must be a showing of the discrimination after July 2nd, 1965, so it is objectionable on two grounds.

The Court: Now, I believe this objection **[347]** was raised earlier in the trial and I ruled then that discriminatory acts prior to the effective date of the Act can be considered by the Court to show a pattern that is perpetuated by policies that are being carried at this time, so I am going to overrule that objection as to remoteness. I'm going to let that go to the weight of that evidence, of course.

Mr. Wells: Will it be necessary for us to point out each individual? We understand Your Honor's ruling, but if there comes, as there will, some back in 1952, twenty years ago, or '55, seventeen years ago, then a hiatus for sixteen years when nothing happens, do we point that out to you on the record, or may we have our objection to those.

The Court: You may have a running objection to that. I know exactly what you're talking about. In some of these summaries, they were very remote, and to me, that goes to the weight to be given to that rather than its admissibility. I will just consider that as the trier of the facts.

Anything else you want to bring up before Mr. Fenton continues with the tendering of these depositions?

All right, sir. Let's go. We are down to Mr. Roy M. Wilson, I believe.

Mr. Fenton: Correct.

The Court: And by the way, that case that you cited me, Mr. Fenton, was Fed. 2d, 416 Fed. 2d., not Fed. Sup.

[348] Mr. Fenton: Yes, Your Honor.

With respect to Mr. Wilson's first deposition, plaintiff offers in evidence Pages 1 through 59, Line 22, and then Page 62 beginning at Line 5 to Page 71, and then Page 76, beginning at Line 5 through Page 77, Line 19. And then Page 83, beginning at Line 4, through Page 84, ending at Line 22.

The Court: Line 22 on the last one?

Mr. Fenton: That's correct.

The Court: All right.

Mr. Schuler: We have nothing to add to that, Your Honor.

The Court: All right. That takes care of Mr. Wilson.

Mr. William E. Franzen.

Mr. Fenton: Pardon me, Your Honor. Mr. Wilson had a subsequent deposition.

The Court: Have you got that there so I can place it together, please?

Mr. Wells: If Your Honor please, on Mr. Wilson's initial deposition——

The Court: Yes, sir.

Mr. Wells: ——Counsel stopped at 77, Line 19, and picked up at 83-4. I would include that 77-20 through 83-3.

The Court: All right, sir.

[349] Mr. Wells: Just a moment. That's all. Thank you.

The Court: Now, we are looking for the supplemental deposition of Mr. Wilson. I don't have that in front of me here.

What is the purpose of this supplemental deposition?

Mr. Fenton: Mr. Wilson in the supplemental deposition is identifying markings that were made on a exhibit and if the original cannot be found, perhaps we can use that copy.

The Court: I have your copy. Let me place it for the purposes of my examination, then you can retrieve it out of the record later.

Mr. Fenton: Fine. It is acceptable with Counsel that if the original cannot be found that we can just copy those eight pages and substitute it?

Mr. Schuler: That's acceptable.

The Court: All right.

Mr. Fenton: With respect to Mr. Wilson's continued deposition, plaintiff offers in evidence Pages 1 through 8.

Mr. Wells: And defendant unions submit Mr. Mullinax's examination beginning Page 9, Line 5 through the end of Mullinax's examination, Page 11, Line 4.

The Court: All right. Now we go to Mr. **[350]** Franzen, I believe, next.

Mr. Fenton: From Mr. Franzen's deposition plaintiff offers in evidence Pages 1 through 29.

The Court: All right.

Mr. Schuler: Nothing on behalf of the company, Your Honor.

The Court: Next is Sims, then.

Mr. Wells, if I'm going too fast, I don't mean to, let me know.

Mr. Wells: Thank you.

The Court: All right. Mr. Sims.

Mr. Fenton: On Mr. Simms' deposition, plaintiff offers in evidence Pages 1 through 14.

Mr. Schuler: Your Honor, we have some objections on this exhibit—on this deposition.

The Court: All right, sir.

Mr. Schuler: On Pages 3 and 4 there are matters of hearsay, starting with Line 23, and this is also a conclusion on the part of the witness, starting with the word, "Well, truck driving to her was almost like being hit in the face, I guess", and continuing over to the end of Line 1 on Page 4.

The Court: Well, a conclusion as to what she said to him? You consider that—this is an employee of T.I.M.E., I gather.

[351] Mr. Schuler: He is concluding as to what an employee of the unemployment commission——

The Court: Oh, oh.

Mr. Schuler: ——was saying and what her reaction was.

The Court: Excuse me. I thought that was an employee of T.I.M.E. Let me hear from the government on that.

Mr. Fenton: Your Honor, we have no objection to that being removed. That's Line 23 through 25 on Page 3 and——

The Court: That will be omitted through Line 1 on Page 4. All right, sir.

Mr. Schuler: Also, on Page 6, well, I guess you have already ruled generally about reputation. There was a statement on Page 6 about reputation.

The Court: Yes, sir, I have made my ruling.

Gentlemen, excuse me. Go ahead. I found the deposition you were looking for here.

Mr. Schuler: We have no further pages on the Simms deposition to add, Your Honor.

The Court: Mr. Fenton, I'll give you back your copy of the supplemental deposition of Mr. Wilson. I located it over to the side here.

[352] All right. That takes care of Mr. Simms then. Now, go to Lenard Harrison.

Mr. Fenton: From Mr. Harrison plaintiff offers in evidence Pages 1 through 19.

Mr. Schuler: We have nothing further to add to that, Your Honor.

The Court: All right. Mr. Trujillo.

Mr. Fenton: Plaintiff offers in evidence Pages 1 through 13.

Mr. Schuler: We have nothing to add to that one, either, Your Honor.

The Court: Mr. Earmitt C. Jones.

Mr. Fenton: From Mr. Jones plaintiff offers in evidence Pages 1 through 17.

Mr. Schuler: We have nothing to add to that one, Your Honor.

The Court: All right, sir. Mr. Jerome Pastwick.

Mr. Fenton: On Mr. Pastwick, plaintiff offers in evidence Pages 1 through 17.

Mr. Schuler: We have nothing to add to that, but we do have an objection.

The Court: All right. Let me hear your objection.

Mr. Fenton: On Pages 8 and 9 the question **[353]** at the top of Page 8 is, "Why do you believe you received those warnings or letters", is calling for a conclusion, and that continues down through most of the page.

Then, there is a request for the personal opinion of the witness as to the reputation of the company, and continuing on over to Page 9. The witness is talking about what his conclusion is, or what he believed was the position of the person he was talking about. Again, that's hearsay.

The Court: Through Line what on Page 9?

Mr. Schuler: Through Line 10 on Page 9.

The Court: All right. I've got to mark your objection. I'm going to read that before I rule on that. Of course, rank hearsay, I'm going to omit, and not consider, and I have already ruled on the reputation phases.

Mr. Schuler: The first part of Page 8 was a conclusion.

The Court: Yes, I have that down.

Mr. Schuler: All right.

The Court: A conclusion there. I won't consider that. All right. We're going into the Los Angeles depositions now.

Mr. David R. Nagel.

Mr. Schuler: Your Honor, there will be a considerable amount of objections on the Los Angeles depositions, and I wonder if this might be an appropriate time **[354]** for us to go out of order and take the two witnesses I have whose testimony will be quite short.

The Court: Do you have any objection to that?

Mr. Fenton: None.

The Court: All right. Let's bring the witnesses forward and have them sworn at this time.

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ROBERT M. BAILEY,

called as a witness at the instance of the defendant company, having been first duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Schuler

Q. Will you please state your full name for the record. A. Robert M. Bailey.

Q. And how do you spell your name? A. B-a-i-l-e-y.

Q. What is your residence address, Mr. Bailey? A. Route 1, Royse, Texas.

Q. And is that a suburb of Dallas, Texas? A. Long rural.

Q. Quite a ways from Dallas, isn't it? **[355]** A. Right.

Q. Do you work in Dallas for T.I.M.E.-DC? A. Right.

Q. What is your position there? A. Dock supervisor.

Q. And how long have you been there as dock supervisor? A. About three and a half years.

Q. Prior to that time where did you work, Mr. Bailey? A. Western Gillette.

Q. Did you know a man by the name of Harrell Holley at Western Gillette? A. Yes.

Q. Did you have any contact with Mr. Holley after you left Western Gillette and came to T.I.M.E.-DC at Dallas? A. I did. He was laid off and I did have contact with him seeking—he was seeking employment.

Q. Did you contact him to see if he would want to be employed by T.I.M.E.-DC at Dallas? A. I sent word that I would like to see him.

Q. And did he come in there after word to apply for a job? A. Right.

Q. Now, he has testified previously in this proceeding that he filed an application October 21st, 1970. Do you remember that as being the approximate date when he came in to apply? **[356]** A. I couldn't say that that was the date. Probably was.

Q. His testimony indicated that the first person he saw was the road supervisor. Who is the road supervisor at the Dallas terminal of T.I.M.E.-DC? A. Roy Walker.

Q. And do you know of your own knowledge who Mr. Holley came to see first? A. Myself.

Q. And what did he ask about and what did you tell him? A. He brought his application and I was reviewing his application and he did state on his application that he was seeking work either in the city or on the road.

Q. Did you make any comments to him about the availability of jobs on either city or road? A. I told him we could use him in the city but his chances of getting any road work were very slim.

Q. And did you then have any further dealings with him on that day? A. I did. I took him to see Mr. Walker, since he was the road supervisor, and introduced him and Mr. Walker told him the same thing.

Q. Well, we will get into that with Mr. Walker.

Did Mr. Holley work as a casual after filling out an application? A. Right. The following day he worked in the city.

[357] Q. And did he work any time after that as a city casual? A. He worked one Saturday.

Q. Did you have any occasion to ask him on that Saturday if he wanted to come back later for some more casual work in

the city? A. I believe I asked him to come back that Monday. Now, I couldn't swear to it, but as well as I can remember, he had other obligations for the following Monday and couldn't work for us.

Q. Did you at any time thereafter try to get him to come back to work as a casual in the city? A. I tried a couple of times by phone, but I never saw him personally again after that.

Q. Mr. Holley has testified that after he had worked two or three days for you, he called back and was told that your company could not use him. Did you ever talk to him and tell him a thing like that? A. No, sir.

Q. And did you, in fact, affirmatively seek to get him back as a casual in the city? A. Other than calling him, that was the only contact I would have had with him, but after I called him a few times, well, I quit trying.

Q. Now, another witness that appeared here was a man by the name of Michael Arriaga. He said that he thought he was **[358]** told by someone at the company that there was no hiring going on for city driver jobs, for dock work around May of 1970. Do you remember having any contact with Mr. Arriaga at all? A. I don't remember the name.

Q. Another witness was Roger McCrimmon who testified regarding applying for a road job in April of 1970, and he indicated that he was told by the terminal manager that there was a policy against transferring from the city to the road at the Dallas terminal. My question to you is do you know of any white city drivers who have sought a transfer to a road job and have been denied this because of the same uniform policy of no-transfer? A. Yes.

Q. Who are the white drivers you know? A. Morris Ashmore.

Q. Anybody else? A. I have heard that Bill Veazy did, but this is not my own knowledge.

Mr. Schuler: I have no further questions.

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[366] **ROY L. WALKER, JR.,**

called as a witness at the instance of the defendant company, having been first duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Schuler:

Q. Will you please state your name for the record? A. Roy L. Walker, Jr.

Q. What is your residence address, Mr. Walker? A. 604 Spinner Road, Desoto, Texas.

Q. Is that somewhere near Dallas? A. Yes, sir.

Q. And do you work for T.I.M.E.-DC in the Dallas? A. Yes, sir.

Q. And do you work for T.I.M.E.-DC in the Dallas terminal? A. Yes, sir.

Q. What is your title there, Mr. Walker? A. I am line driver supervisor and office manager.

Q. How long have you been employed by T.I.M.E.-DC? A. Since 1960.

Q. And how long have you been employed in the Dallas terminal? A. All this time, sir.

Q. How long have you been line driver supervisor? A. About five or six years.

[367] Q. All right. Then you were line driver supervisor in 1970 during the month of October, weren't you? A. Yes, sir.

Q. Do you recall during that month that a man named Harrell Holley came in to see you about a road driver job? A. Yes, sir.

Q. Did he come in by himself or did someone else bring him in? A. No, sir. Mr. Bailey brought him in and introduced him to me.

Q. And what did you tell Mr. Holley about the likelihood of getting a road driver job? A. We told him that at that time we weren't using too many casuals and we were using some in the city, but we didn't let them switch from the line or the road to the city or vice versa, and he stood a much better chance of obtaining employment in the city.

Q. Did you give him any details as to what your situation was for either regular or casual road work? A. No, sir, except that we just weren't using too many casuals at this particular time.

Q. Did Mr. Holley raise any objection to what you told him about the availability of road work? A. No, sir.

Q. Did you have any further contact with Mr. Holley? **[368]** A. No, sir.

Q. To the best of your knowledge, did he commence to work as a casual on the city board? A. As far as I know, yes, sir.

Q. Did you at any time ever tell him that he would never be used again by the company? A. No, sir.

Q. I'm going to show you what is part of Exhibit 146 that has been introduced in this proceeding, I'd like you to look at the Dallas line driver seniority roster and with respect to Mr. Holley, he claimed that he applied for a road driver job in October of 1970, I want to direct your attention to the two

people that were hired after that in November of 1970, Mr. McBride and Mr. Bangs, will you tell us what their current status is now? A. They are laid off.

Q. And go up the row from them a little bit and tell us the status of the next man above them and tell us what seniority date each man has. A. Well, the next man above Mr. McBride is Mr. Fink. He has resigned, but his seniority date was August 14, 1970.

Q. That was approximately two months prior to the time Mr. Holley came in, wasn't it? A. Yes, sir.

Q. All right. Continue on up the list, if you will. **[369]** A. The next one is Mr. Pierce. His seniority date is June 11th, 1970. He is on layoff at the Dallas terminal. He has exercised his seniority and bumped in at one of the other terminals.

Q. All right. Continue, please. A. The next man is Mr. Rushing, and his seniority date is June 7th, 1969. He is currently on layoff.

Q. All right. To shorten it up a bit, are any of the other men on that seniority roster above Mr. Rushing on layoff at the present time? A. Well, now, Mr. Wallace, who is above Mr. Rushing, is on layoff, but he also exercised his seniority and bumped in at another terminal.

Q. All right. Anybody else? A. Yes, sir. Mr. Dean, and his seniority date is May 27th, 1968, and he is on layoff at Dallas but he has bumped in at another terminal.

Q. Now, I'd like to direct your attention to the first five men on that line driver seniority roster who show seniority dates between the years of 1963 and 1966, I'd like to ask you if you know of your own knowledge if those men came into your terminal under modified seniority and if so, approximately what date they came into your terminal. A. Yes, sir. The top five men are all, or have all come into Dallas under modified seniority.

[370] Q. Would you give some examples, where they came from and when they came in? A. Yes, sir. The first name, Mr. Howell, he came into Dallas from Lubbock and it was in, I think, February of 1970.

Q. All right. A. Mr. Richardson, he came in from Lubbock in December of '69.

Mr. Allbritton, he also came in from Lubbock in November of '69.

Mr. Riffel, he came in from Oklahoma City and the last time he came in was in August of 1970.

Then we have Mr. Bruce, which came in November of '69. He came in from Lubbock.

Q. The Mr. Riffel that you said came in the last time in August of '70, did he come in under modified seniority as some time prior to August, 1970? A. Yes, sir.

Q. In what month? A. In May.

Q. When each of these five men came in under modified seniority, did this result in any of the men with the lesser seniority being bumped from the line driver jobs? A. Yes, sir.

Q. So for each man that came in, one of your regulars was bumped off, is that right? A. Yes, sir.

[371] Q. Now, I believe you said that Mr. Howell, for example, came in February, 1970, and that would have resulted in someone being bumped off, wouldn't it? A. Yes, sir.

Q. Mr. Riffel, you said, came in May of 1970 and that would have resulted in someone being bumped off. A. Yes, sir.

Q. Would you tell us then what your opinion would be as to whether there were any openings for line drivers in April of 1970, which is between the periods that Mr. Howell and Mr. Riffel bumped in, which was the time that Mr. Roger McCrimmon applied for a road job; would there have been an opening at that time? A. No, sir, because during that time business was fairly

slow, because as you see, we have—that Riffel came from Oklahoma City where he was on layoff.

Q. He came in a month after the time that Mr. McCrimmon said he filed for a road job, didn't he? A. Yes, sir. He came in May the first time.

Q. Now, Mr. Bailey indicated previously that the last two men, McBride and Bangs, on the roster forced their way on to the road board through a union grievance.

The Court: Phil, can you do anything about that? Hold up here a minute.

(The lights in the courtroom ceased to function at this time.)

[372] The Court: While we are off the record here, let's discuss something.

(Discussion between Court and Counsel off the record.)

The Court: I'm just thinking about, we're having a hard time cranking up it seems, and somebody has indicated to me last week that we're going a little faster than we expected. Just looking, we ought to get these depositions ruled on and submitted today, don't you think, Mr. Fenton?

Mr. Fenton: I think so, Your Honor, yes, sir.

The Court: Then, that is your case, as I understand it.

Mr. Fenton: We have a few interrogatories, then that's our case.

The Court: All right. Well, let's assume that we get through today. How much time—how many days will T.I.M.E. need to present their case?

Mr. Schuler: I would estimate a day and a half, Your Honor.

The Court: How about the unions?

Mr. Wells: I think a couple of days.

(Further discussion between Court and Counsel off the record.)

The Bailiff: Sir, it will be about ten minutes.

The Court: We'll just stand by.

[373] It's ordered that the government will file its findings of fact and conclusions, proposals in that respect, by June 15th, and the defendants will each file their findings of fact and conclusions of law by July 15th. The government may respond and modify or change or make additions by August 1st.

After these have been received, I will advise Counsel of the time and place for the argument, which I want to do sometime in August and get this matter disposed of, because I have a tendency to forget some of these details after just so long.

(The immediate preceding question by Counsel to the witness was then read by the reporter to the witness.)

Q. (By Mr. Schuler) Do you know whether or not that happened, Mr. Walker? A. (By the witness) Well, there was a grievance as such, sir. They came down and had their time in and they went on the board.

Q. Those were the two gentlemen, were they not, who went on the board shortly after the time that Harrell Holley filed his application? A. Yes, sir.

Q. All right. Do you know Michael Arriaga, or did you have anything to do with the application that he filed? A. No, sir.

Q. The employment application of Mr. Arriaga, I believe, is an exhibit in this proceeding, and I believe on the employment **[374]** application there is a statement that says that his prior job was working at Red Ball Freight, and that he was discharged for taking part in an unauthorized labor disturbance. Were you aware at any time up until yesterday that Mr. Arriaga had such a comment on his employment application? A. No, sir.

Q. Are you aware of any white city driver who had requested a transfer to the road board at any time in the past? A. Yes, sir.

Q. What are the names of those gentlemen? A. Bill Veazey and John Connell.

Q. How do you spell Connell? A. C-o-n-n-e-l-l.

Q. Do you have a man named Ashmore? A. Yes, sir.

Q. To the best of your knowledge, are they still working as city drivers? A. Yes, sir.

Mr. Schuler: No further questions.

Mr. Wells: No questions.

Mr. Schuler: Your Honor, there's one question that I would like to ask additionally.

The Court: All right. Let's get it in the **[375]** record.

Further Examination

By Mr. Schuler

Q Mr. Walker, as to the two men who forced their way on the road board through a union grievance, McBride and Bangs, can you tell us how long they had worked as casuals prior to the time they were put on the board in November of 1970? A. Sir, they had worked several months prior to this. It's hard for me to remember the exact date on it, though, but we have used them, I'd say, five or six months, maybe longer.

Mr. Schuler: Thank you. No further questions.

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[388] All right. Let's continue now with the Los Angeles depositions.

[389] Mr. Schuler: Your Honor, I have just one other thing I'd like to point out to the Court.

Mr. Walker, who has just completed his testimony, was called here today specifically in the nature of a rebuttal witness as to witnesses woh appeared here in person for the plaintiff. He also was deposed in Dallas, and his testimony there was reduced to a summary. I believe you read his summary.

The Court: Yes, sir.

Mr. Schuler: We also intend to rely on that summary of his deposition. We're not presenting him here in lieu of that summary.

The Court: I believe we crossed that bridge in this case before. We had another case similar to it, and I ruled that you can use the depositions even though he is here in person. That is what you're asking, and I will so consider the use of the summary of his deposition.

Mr. Wells: I misunderstood. I thought on the prior ruling that it was that the live witness would supersede the deposition. Am I wrong?

Mr. Fenton: That's correct, Mr. Wells, but Mr. Schuler's point is that Mr. Walker was deposed on many other matters down in Dallas, and the summary of his deposition was agreed upon among us that Mr. Schuler intends to rely on that summary as well as Mr. Walker's testimony.

Mr. Wells: I am quite clear about Mr. **[390]** Schuler's position. I wanted to understand the Court's ruling on the prior matter because I had assumed that excepting Walker, any live witness who appeared here superseded his deposition.

The Court: Well, except Walker, and those in the same category with him. I'm talking about the summary depositions.

I was a little broad in my statement. I was referring to those summaries that I have already read.

Mr. Wells: Yes, sir.

The Court: That is almost agreed testimony rather than being any contest.

Mr. Schuler: Your Honor, I think——

The Court: So I am going to consider Mr. Walker's summary deposition that you have agreed upon as well as his testimony given from the stand.

Mr. Schuler: Thank you. I believe on this other part that Mr. Fenton raised, he had indicated in his portion of the pretrial order that if a witness could appear at the hearing the deposition would not even be offered into evidence. I think this was Mr. Wells point, too.

The Court: That's agreed except for impeachment purposes, of course.

Mr. Schuler: Yes, sir.

The Court: That's true.

Mr. Schuler: We did have one or two **[391]** witnesses—for example, there was a Thomas White, and his testimony stands that, as I understand it, his deposition was not offered.

The Court: That's correct.

Mr. Schuler: Thank you.

The Court: What I said was limited to the summaries that you have prepared and submitted that I have read.

All right, sir. Mr. Nagel.

Mr. Fenton: With respect to Mr. Nagel's deposition, plaintiff offers in evidence Pages 1 through 67.

The Court: One through what?

Mr. Fenton: Sixty-seven.

The Court: All right, sir.

Mr. Schuler: We would like to add——

The Court: Wait a minute, wait a minute. Just a minute. I don't have but twenty-two pages here.

Mr. Fenton: Of Mr. Nagel?

The Court: David R. Nagel.

Mr. Fenton: Correct. Mr. David Nagel was deposed later on in September by the company.

The Court: Let's get the right Nagle deposition here.

Now, you're tendering only the deposition taken May 17th, 1971?

[392] Mr. Fenton: Correct.

The Court: All right. Let me give this back to you.
Anything further from anyone on Mr. Nagel's deposition?

Mr. Hunter: In that light, Your Honor, is it appropriate at this time, given the fact that there was an additional deposition taken on September 28th, 1971——

The Court: Let me get it out.

Mr. Hunter: Is it appropriate at this time to move that in addition to that deposition taken of Mr. Nagel on the earlier date, that the additional deposition of Mr. Nagel taken on September 28th, '71 also be offered into evidence at this time.

The Court: Well, now, what portions, or all of it?

Mr. Hunter: We would move that the entire deposition be submitted.

The Court: I don't know whether it's on the pre-trial order, but I indicated I would be lenient on this. Is there any objection?

Mr. Fenton: No objection. It's listed on the pre-trial order.

Mr. Hunter: Okay.

The Court: All right. That will be in there. One to sixty-seven on the May deposition and one to **[393]** twenty-two in the September deposition of David R. Nagel.
Anything further on those depositions?
All right, sir.

Mr. Wells: Judge, I'm sorry. I'm trying to find that short deposition, the second deposition.

The Court: All right. It's a short one.

Mr. Wells: Thank you. I found it.

Mr. Fenton: Mr. Rockwell, plaintiff offers in evidence——

The Court: Wait just a minute. I haven't gotten it up here yet.
All right. I have Mr. Rockwell before me, May, 1971 deposition.

Mr. Fenton: On Mr. Rockwell, plaintiff offers in evidence Pages 1 through 12 and Line 24 on Page 12, and then on Page 19, Lines 10 through 21; on Page 26, starting at Line 7, and going through Page 49, ending at Line 7; on Page 52, Lines 1 through 18, and on Page 58, beginning on Line 5 and through to the end of Page 62.

The Court: All right, sir.

Mr. Schuler: We want to have all of the cross-examination by the company. I'll have to find that page.

Mr. Wells: Forty-three, I think.

Mr. Schuler: That would be Page 43.

The Court: Page 43.

[394] Mr. Schuler: Starting at Line 23 and that continues over to Page 51, Line 22.

The Court: All right, sir. Anything further on Mr. Rockwell from anyone?

Mr. Wells: If Your Honor please, I am confused. I thought the government had twenty-six, Line 7 to 49, Line 7, which would include what Counsel just designated.

Mr. Schuler: Oh.

The Court: Yes, it would. There is some overlap between the two.

Mr. Wells: Thank you.

Mr. Schuler: Well, then, we would simply be adding the remainder of Page 49.

The Court: Yes, sir. You want all the cross-examination in there.

Mr. Schuler: Yes, sir. Pages 51 and 52.

The Court: All right, sir.

Mr. Schuler: Also there is a supplemental deposition of Mr. Rockwell.

The Court: All right. I have that in front of me, September, '71.

Mr. Schuler: We want to add, ask that Pages 1 to 10 be utilized there.

The Court: All right, sir. Anything from the government on that?

[395] Mr. Fenton: No objection.

The Court: Anything on the supplemental you want to offer?

Mr. Fenton: I'm sorry. No.

The Court: All right. We'll go to Anthony W. Lillywhite, May, 1971 deposition.

Mr. Fenton: From Mr. Lillywhite's deposition plaintiff offers in evidence Pages 1 through 50.

Mr. Schuler: We have nothing to add there, Your Honor, and there is a further deposition of Mr. Lillywhite, and we would like to designate Pages 1 through 13 of that.

The Court: That's the September deposition, Pages 1 through 13. All right, sir.

All right. I guess Mr. Shepherd is next.

Mr. Fenton: On Mr. Shepherd plaintiff offers in evidence Pages 1 through 7 through Line 17 on Page 7.

The Court: One through seven.

Mr. Fenton: Pages 1 through 7.

The Court: Line 17.

Mr. Fenton: Through Line 17 on Page 7.

The Court: All right, sir.

Mr. Fenton: Then, Pages 21 through 24.

The Court: All right, sir.

Mr. Schuler: I'm sorry. What were those pages again, please?

[396] Mr. Fenton: The first was one through seven, Line 17, and then Pages 21 through 24.

Mr. Wells: May we go off the record a moment?

The Court: Yes, sir.

(Discussion between Court and Counsel off the record.)

The Court: All right. What was Counsel for T.I.M.E. wanting to submit and tender into evidence?

Mr. Schuler: We have nothing further to offer on the Shepherd deposition.

The Court: Anything, Mr. Wells?

Mr. Wells: No, sir.

The Court: All right. Let's go to Mr. John Le Flore.

Mr. Fenton: On Mr. Le Flore, plaintiff offers in evidence Pages 1 through 6 through Line 5 on Page 6, and then on Page 8 beginning at Line 12, and through Page 9 ending at Line 12.

Mr. Schuler: Your Honor, this is a deposition that has what we consider to be a lot of objectionable conclusions, and hearsay. Part of it has been cured by striking out Pages 6 and 7 by the plaintiff.

The Court: Now, who is this witness. Is he an employee?

Mr. Fenton: He is a union official, Your **[397]** Honor.

The Court: All right. Now, Pages 6 and 7 we're talking about.

Mr. Schuler: However, there is other objectionable opinion and hearsay on Pages 4, 5, 9, 10, 18, 27, 31 and 33.

The Court: Well, none of that has been offered, now. He just went through Page 9, Line 12, as I understand, or was there anything else?

Mr. Fenton: That's all, Your Honor.

The Court: Let's don't get anything after Line 12 on Page 9.

Mr. Schuler: All right. Let me compare that one more time.

The Court: All right.

Mr. Schuler: All right. Page 9, the plaintiff has offered Lines 1 through 12 and we object to the answer on Lines 1 through 5 on the basis of hearsay.

The Court: It says to my knowledge. That's not hearsay.

Mr. Schuler: He goes on to say——

The Court: He says, "I think" a couple of times there, but——

Mr. Schuler: He may say that it is his own knowledge, Your Honor, but I don't think he has the **[398]** knowledge or, at least, the source of knowledge has not been stated on the record. There's no qualification for the basis of the knowledge, and it continues on down to Line 12, and there are statements in there, "The pressure was so great there that he had to leave". These are opinions mixed in with some factual material.

The Court: Well, I'm going to consider only the factual material, and there is one of them over there where he says, "To me this adds up to discrimination", statements like that, I'm not going to consider because we are looking at the facts here rather than unsolicited opinion.

Mr. Schuler: All right. Then, back on Pages 4 and 5, Lines 18 through 25, we feel are objectionable because they constitute hearsay.

The Court: Well, now, on the Federal Compliance Committee—Counsel, that's hearsay, but the substance of his answer is, "I helped him to try to secure applicants for these particular jobs", which is a response to the question. That will be considered. The rest of that I'm not going to consider for the truth of the matter stated, but only his assigned reasons for taking the action that he did. I think it is admissible for that purpose.

Mr. Schuler: All right. Thank you.

Over on Page 5, the answer starting on Line 6—Line 11, we also object to on the basis of hearsay, again the next **[399]** answer on Line 19 through Line 23 on the basis that is the statement of a conclusion without foundation.

The Court: Well, he said he was refused employment. You think that might not have been his knowledge, talking about Mr. Neely.

Mr. Schuler: Yes, we do not think any basis has been established for him having such knowledge.

The Court: Well, I am going to overrule. I'm going to let all of Page 5 in.

All right. Anything else?

Mr. Wells: If Your Honor please, we would offer on this Le Flore deposition Page 10, Line 20 through 23, Line 13, being the cross-examination.

The Court: All right. Page 10, Line 10 through what?

Mr. Wells: No, Page 10, Line 20.

The Court: Line 20, yes.

Mr. Wells: Through 23, Line 13.

The Court: All right, sir.

Mr. Wells: And Page 34, Line 11, through 35, Line 4.

The Court: All right, sir.
Anything further?

Mr. Schuler: I am not sure that I indicated some designated pages.

[400] The Court: No, sir.

Mr. Schuler: We want to designate Pages 23 through 30 and 35 through 36.

The Court: All right. There are some overlaps in that, but I understand what you are——

Mr. Schuler: Yes.

The Court: All right. Are we ready to go to Mr. Butler?

Mr. Fenton: On Mr. Butler plaintiff offers in evidence Pages 1 through 15, Line 6, and then——

The Court: One through fifteen?

Mr. Fenton: One through fifteen, Line 6 on 15, and then starting at Page 38 at Line 7, going through Page 40, Line 3.

The Court: All right, sir.

Mr. Schuler: We would like to add the cross-examination that appears on Pages 45 through 49 and also at 52 through 57. In addition, we think that this is a case where the deposition will have to be read in conjunction with the stated purpose of the deposition as shown on Page 4 of the list of the purposes. The purposes here is intended to show the failure and refusal of the predecessor company of T.I.M.E. by the name of LASME —there's a great deal in the deposition that tends to ramble on about other companies, and since the purpose stated being to refer only to LASME, we have no **[401]** objection, but any other references to other companies we think are objectionable.

The Court: Now, that's the reason I asked the government to give me their purpose because it certainly helps me in understanding the deposition.

Is there any objection to me considering it for these purposes?

Mr. Fenton: None at all, Your Honor.

Of course, we add the further statement that we believe that the actions or failure to act of predecessor companies are the responsibility of the current T.I.M.E.-DC.

The Court: Well, or the responsibility of——

Mr. Fenton: That is, they assumed the obligations.

The Court: As far as the pattern of discrimination, I'm sure it would carry on through, but I don't want to be in a position of agreeing that the monetary liability doesn't get in that, because——

Mr. Fenton: I am alluding to Title 7 proof.

Mr. Schuler: There's one specific objection, Pages 10 and 11, the hearsay matters.

The Court: All right. Let me find that. On pages 7—oh, I'm sorry. On Line 7, Page 10, there's hearsay regarding what

was said by a dispatcher in the hiring **[402]** hall named Ed Blackmar. He was not a T.I.M.E. employee, and yet this witness attempted to say what that man told him. This is an employee, the dispatcher at the union hall we're talking about here.

Mr. Schuler: Yes.

The Court: Talking to this witness. No T.I.M.E. employee involved. I'm going to sustain those objections.

Mr. Schuler: And then, at Lines 13 through 17 there is a reference to two or three black drivers.

Well, that refers back to something that was said by Blackmar.

The Court: Yes, sir.

Mr. Schuler: We think that should be stricken as hearsay.

The Court: Goes through Line 5 on Page 11, I presume.

Mr. Schuler: Yes.

The Court: Well, I'm going to exclude the hearsay. I don't think it is proper evidence in this suit.

Mr. Schuler: And included in that, at the bottom of Page 10, starting at Line 23, going over to Line 5, Page 11.

The Court: Yes, sir, that's hearsay.

Mr. Schuler: That is hearsay.

[403] The Court: Yes, sir.

Mr. Schuler: That completes the objectionable material in that deposition.

The Court: Let's go to Mr. Williams.

Mr. Fenton: Line 7 on Page 10, through Line 5 on Page 11, is that correct?

The Court: My ruling was I'm going to read this, Mr. Fenton, and I'm not going to consider any portions of it that is hearsay. I know some things he was testifying to were not hearsay, then all of a sudden he rambles and says they told him so and so over the telephone. I'm going to read that and if there is a fact like he stated, "I went out to the union hall that morning", well, that's fine. I'm not going to exclude it, but his objection in that respect started at Line 3 on Page 10 and down through Page 12, Line 2.

Mr. Fenton: All right.

The Court: As I understood. I will read those and examine them accordingly.

Mr. Wells: Before you get away from Mr. Butler's deposition, if Your Honor please, I have some additional designations.

The Court: Yes, sir.

Mr. Wells: Page 44, Line 1 through Line 25.

The Court: All right, sir. Now, we are **[404]** at Mr. John T. Williams.

Mr. Fenton: On Mr. Williams plaintiff offers in evidence Pages 1 through 12.

The Court: Pages 1 through 12?

Mr. Schuler: We have nothing additional to offer regarding Mr. Williams.

Mr. Wells: We offer Pages 13 through the remainder of the deposition, through Page 23.

The Court: All right, sir. That's all of that deposition.
Go to Mr. Lyle West.

Mr. Fenton: On Mr. West plaintiff offers Pages 1 through 9 on Line 3 on Page 9. Then begininng at—Pardon me. Beginning at Line 17 on Page 9 going through——

The Court: That is Page 9?

Mr. Fenton: Right. Going through Page 10, Line 1. And beginning at Line 24 on Page 10 and going through Page 14 through Line 6. Beginning at Line 20 on Page 14 and going through Page 17, through Line 24; and beginning on Page 19 at Line 23 and going through Page 20 through Line 10.

Mr. Schuler: We would object to the entire deposition as referring to events that are too remote. I think probably if you desire to read it with that objection in mind, we would have no objection to that procedure.

The Court: I will make the notation that **[405]** you objected on the remoteness. I will have to read it to determine it.

Now, I indicated awhile ago this remoteness is going to the weight of the evidence. I don't mean to say that I am not going to draw a line somewhere, but I will just have to examine it and if it's just too remote, had nothing to do with matters in this suit, or could have no possible bearing, I will not consider it, but if it does have evidence of a pattern of discrimination that existed prior to the effective date of the Act, it has some relevancy to the suit, and I will consider it.

Mr. Schuler: All right. In that regard, if you're going to read it with that thought in mind, we think the entire deposition should be read, including the parts that were omitted by Mr. Fenton in this statement of the parts.

The Court: You're doing that on the basis that it is necessary in order to rule on the objection or to determine what weight should be given to it.

Mr. Fenton: For both purposes.

The Court: Yes, sir. I understand. Well, I'll just examine that entire deposition then.

Mr. Ruddison.

Mr. Fenton: On Mr. Ruddison, plaintiff offers in evidence Pages 1 through 13.

Mr. Schuler: We would like to have all of his cross-examination included, and we have specific objections **[406]** On Pages

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The Court: Let's see, let me get the cross-examination down. Where does that start? The index doesn't help me much.

Mr. Schuler: Well, as a matter of fact, I guess Page 1 through 13.

The Court: That is the entire deposition, as a matter of fact. Yes, all right. Now, what are your objections?

Mr. Schuler: There is hearsay on Page 10, Lines 6 through 11.

The Court: Page what, sir?

Mr. Schuler: Page 10, Line 6 through 11.

Mr. Fenton: Your Honor, I believe this is a company official. This would be an admission of the company.

The Court: What is this man's capacity?

Mr. Fenton: Bob Adams identified——

The Court: Supervisor of some sort?

Mr. Schuler: Well, the remark in question is referring to something that was said by Tom White, one of the deponents. It does not refer to what Mr. Adams of T.I.M.E.-DC had to say.

The Court: He said he gave me the same answer, referring to Mr. Adams. He says what was that.

Mr. Schuler: I withdraw that objection, **[407]** Your Honor.

The Court: The answer just doesn't make much sense to me.

Mr. Schuler: I'll withdraw that objection, Your Honor.

The Court: All right, sir. Well, that's got the entire deposition of Mr. Ruddison in.

We go to Mr. Roy F. Patton.

Mr. Fenton: Plaintiff offers in evidence Pages 1 through 11, Line 23 on Page 11.

The Court: I'm having a little trouble with these pages sticking. What line?

Mr. Fenton: Line 23.

The Court: All right, sir.

Mr. Fenton: Then, starting at Page 12 at Line 16 and going through Page 20 through Line 9.

The Court: All right, sir.

Mr. Fenton: Then, Pages 22 through 28.

The Court: All right, sir. That leaves a small portion of that deposition that is not tendered here. Does anybody wish to tender those omitted lines?

Mr. Schuler: Let's see, I guess, Your Honor, on this one we will want you to read all of the deposition.

The Court: Well, I think I can read all of it rather than picking out the others. It's not half a page **[408]** omitted there.

Mr. Schuler: All right.

Mr. Wells: Excuse me. Are you still on the Patton deposition?

The Court: Roy F. Patton. What they have tendered in evidence was almost the entire deposition with the exception of Page 21, and the last half of Page 20 and the first half of Page 12, so Mr. Schuler suggested I just read the entire thing, so I am going to do that.

Any objection to it?

Mr. Schuler: And I do have a couple of objections. On Page 16 and 17——

The Court: Sixteen and seventeen?

Mr. Schuler: Sixteen and seventeen there is hearsay contained in the answer on Line 18 and Line 19.

The Court: I don't think that's hearsay. He and another man went up to a supervisor and applied for a job, to Mr. Starr, who, I presume is the supervisor there, isn't he?

Mr. Fenton: That's correct.

The Court: I don't believe that's hearsay.

Mr. Schuler: Also, at the top of Page 17 there are also references in the first two questions and answers, running down through Line 5——

The Court: Yes, sir.

[409] Mr. Schuler: ——regarding this witness' knowledge as to when another man by the name of White filed a complaint. We believe this would be hearsay, also.

The Court: Doesn't sound like he really knew, just what he knew from hearsay is what I get out of those. I'm going to sustain that objection.

Mr. Schuler: And at both Pages 8 and 18 there are matters that we think are remote and, as I understand your ruling, you're going to——

The Court: Let that go to the weight.

Mr. Schuler: ——let it go to the weight.

The Court: What pages are those that are remote?

Mr. Schuler: Eight and eighteen.

The Court: All right. I'll flag that so I'll note it at the time.

Mr. Schuler: On Page 11 and 12, starting at Line 24—on Page 11 there is a conclusion. This continues on over to Line 15.

The Court: Well, Mr. Fenton didn't offer those, as a matter of fact, so let's just exclude it.

Mr. Schuler: All right, fine.

The Court: He did not offer those.

Mr. Fenton: That's correct.

The Court: So we will just——

[410] Mr. Schuler: That concludes the objections on that deposition.

The Court: All right, sir. Next is Mr. Banuelos.

Mr. Fenton: Mr. Banuelos, plaintiff offers in evidence Pages 1 through 21. That's the entire deposition.

The Court: All right, sir. Any objection from the other parties?

Mr. Schuler: We have several objections on that one. Pages 6 to 9, we believe those allegations are remote, and subject to your earlier interpretation.

The Court: I'll note that.

Mr. Schuler: And on Page 10, Line 16 to 20, we believe that this is hearsay, and a conclusion without foundation.

The Court: Well, the question is did you ever complain to a union official about this and the answer is yes, I complained, and from there on is where you object, isn't it?

Mr. Schuler: Yes.

The Court: I am just going to have to take those under advisement. I'm going to have to have the sense of the deposition before I can really understand, but I have got a notation.

Mr. Schuler: All right. And those are the **[411]** only objections we have.

The Court: All right. All right, sir. Mr. William Thomas Simpson, Jr.

Mr. Fenton: From Mr. Simpson plaintiff offers in evidence Pages 1 through 14 and again this is the entire deposition.

The Court: Any objection?

Mr. Schuler: We have one objection. Well, actually it is a whole line of questions from Page 6, Line 19, over to Page 8, Line 24. We think the whole line of questioning is objectionable on the ground of hearsay.

Mr. Fenton: Your Honor, I believe all this testimony is what the man stated from his personal knowledge.

The Court: Well, how about, just as an example, Lines 20, 21 and 22; who is Mr. Nagel?

Mr. Fenton: Mr. Nagel is an official of the company.

The Court: I take it back. Well, any testimony in this deposition from Page 6, Line 19 through Page 8, Line 24 will be omitted as to hearsay. I'm talking about conversations that this witness had with people who were not employees of T.I.M.E.

Mr. Fenton: Your Honor, we also believe that conversations had with the unions' officials would be admissible.

[412] The Court: Or with union parties to the suit, or their officials, not a fellow employee, but I'm talking about an employee in a supervisory capacity.

Mr. Wells: Your Honor, we would like to record our continuing objection to testimony with respect to conversations with local union officials. For example, purported conversations with John T. Williams, who is a government witness, and at one time was a local union agent, but is no agent of the defendant unions before you.

The Court: I'm going to overrule and consider these.

All right, sir. Anything else from Mr. Thomas—William Thomas Simpson's deposition? If not, we will go to Mr. Virgil A. Hardin.

Mr. Fenton: On Mr. Hardin plaintiff offers in evidence Pages 1 through 10, Line 6 on Page 10.

Mr. Schuler: Your Honor, we want Pages 10 to 20, so I guess it's going to end up being the whole deposition.

Mr. Fenton: Right. If you are offering Pages 20, Line 15, through Page 23.

The Court: All right. That effectively offers the entire deposition except Pages 21, 22 and 23. Anybody want to admit those for any particular reason?

Any objection then?

[413] Mr. Fenton: Mr. Almaraz, plaintiff offers in evidence Pages 1 through 33. This is the entire deposition.

The Court: All right. Any objection?

Mr. Schuler: We have some objections there, Your Honor.

The Court: All right.

Mr. Schuler: On Pages 6, 7 and 8 the matters related there are remote. On Page 14, starting with Line 9 to Line 21, the answers there are based on hearsay.

The Court: Not responsive it doesn't look like, either.

Mr. Schuler: Yes, that would be an additional basis.

The Court: I am going to sustain the objection. You asked him how long and he gave a speech. I'm going to sustain the objection to that portion of the deposition.

Mr. Fenton: That is Page 14, Line 9?

The Court: Nine to twenty-one.

Mr. Schuler: And on Page 20, may I have just a moment, Your Honor?

The Court: Yes, sir.

Mr. Schuler: Actually, it starts back on Page 19 with the answer on Line 9, continuing over to Line 9 on Page 20. The whole tenor of that has to do with an unsupported opinion and conclusion, and on the top of Page 20 **[414]** a reference to three or five other individuals who allegedly felt pressure, and I don't know how he could testify as to their feelings or opinions.

The Court: Well, I have got to go back and read Mr. Hunter's questions on that to rule. But as far as the first part of Page 19, I am going to overrule the objection. He's stating his reason for doing or not doing something. So I'm going to overrule the objections to that extent on Pages 19 and 20 and we'll consider that.

Gentlemen, I've got criminal sentencings at 1:00. I'm going to go through and see if we can't at least get through the Los Angeles deposition before we recess for lunch.

Mr. Schuler: Your Honor, in the previous recess, we had reviewed again through Mr.—I guess through Mr. Elmer Banuelos, and we would appreciate a little time to review the rest of the Los Angeles people.

The Court: All right. I'm going to give you more time because I have got to take care of the criminal matters at one. I ought to be through by 2:00. Why don't you review as much as you possibly can on all of these depositions, not just for Los Angeles, but whatever you might have right on through.

Mr. Schuler: All right. Thank you, Your Honor.

The Court: One other thing occurred to me **[415]** when we were talking about submitting these conclusions and proposed findings of fact. I don't think I'm going to ask you to put them in final form, your proposed remedies, but any suggestions you have got that you might have about these remedies.

Now, let's go off the record here.

(Discussion between Court and Counsel off the record.)

(Afternoon Session)

The Court: All right. I believe we're down to the depositions in Denver, Mr. John Passi.

Mr. Schuler: I believe that is at Los Angeles, Your Honor.

The Court: I said Denver, didn't I. I mean Los Angeles, yes, sir.

All right. What does the government wish to introduce?

Mr. Fenton: On Mr. Passi plaintiff offers in evidence Pages 1 through 12. This is the entire deposition.

The Court: All right. Are there objections from the defendants?

Mr. Schuler: No objection to that, Your Honor.

The Court: All right. Let's go to Mr. David E. O'Neal.

Mr. Fenton: From Mr. O'Neal plaintiff **[416]** offers in evidence Pages 1 through 24, Line 9.

The Court: All right. Now, anything that either of the defendants wish to offer, or tender in evidence on this deposition, or are there any objections?

Mr. Schuler: We have two matters. First, we would like to offer some remaining pages. Pages 24 through 30.

The Court: So this makes the entire deposition.

Mr. Schuler: Yes, yes, Your Honor. And there are several objections.

The Court: All right, sir.

Mr. Schuler: There are objections based on remoteness as to allegations on Pages 9 through 14 and 27 through 29.

The Court: Is Mr. O'Neal a supervisory employee?

Mr. Fenton: He is presently employed as a dock man, I believe, Your Honor.

The Court: All right. And he is talking about something that happened how far back, in 1965—'55, on Page 9.

Mr. Fenton: I think he's referring to '65 and '66.

The Court: Is that remote? Is that your **[417]** contention, Mr. Schuler?

Mr. Schuler: Well, let me see the rest of the pages. A little earlier on that page he said it was about '55 or '56. Then, I guess he does correct it.

The Court: I think he tries to correct it down on Line 22 there.

Mr. Schuler: Yes. I believe that's correct.

The Court: Well, if it's remote, I am going to make the same ruling. I just comment there that that might not be remote.

Mr. Schuler: All right. And then on Pages 10 through 14 there is testimony regarding a deceased company employee, and I'm not entirely sure of the state of the law in Texas, but I believe that that is admissible.

The Court: The Dead Man's Statute?

Mr. Schuler: As I say, I have not had the chance to check that.

The Court: Let's see, we've got a transaction that the government alleges with the corporation and then we have got testimony by the agent of that corporation that we are talking about who is now deceased, is that it?

Mr. Schuler: Yes. We have testimony from an employee of the company, Mr. O'Neal, relating to an alleged statement by a former terminal manager of the company, who is **[418]** now deceased.

The Court: These would not be transactions with the deceased, now. It would be with the company through the de-

ceased. I'm just thinking out loud. You briefed the Dead Man's Statute in Texas, Mr. Fenton.

Mr. Fenton: I'm sorry, I didn't, Your Honor.

The Court: All right. I'm going to have to take that under advisement. I don't know, either. I'll have to read the testimony to start with.

Mr. Schuler: All right.

Mr. Fenton: Our position would be that he is testifying as the company, or that these statements made by the official were made in behalf of the company.

The Court: I will just have to examine that testimony before I could rule on that.

Mr. Schuler: All right. And on Page 18 and 19 there is hearsay starting at Line 23, "I was aware of a black line driver," etc., continuing to Line 1 on Page 19.

The Court: That is obviously based upon hearsay there. Let me hear from the government.

Mr. Fenton: Your Honor, on Page 19 he is asked who was that and he states James Neely. Of course, Mr. Neely was a live witness here at this trial. I think he's testifying of his own personal knowledge.

[419] The Court: But he is not testifying of his personal knowledge as to what T.I.M.E. promised James Neely.

Mr. Fenton: That's correct.

The Court: So I am going to sustain it in that respect. I think the testimony can be fairly admitted to the effect that he knew that James Neely applied for a job, but as to what T.I.M.E. promised him would be hearsay as to this witness. I'm going to sustain it.

Mr. Schuler: And on Pages 25, 26, 27, starting at Line 22 on Page 25.

Mr. Fenton: Your Honor, if I could interject here, we terminated our offering of Mr. O'Neal on Page 24 at Line 9.

The Court: Yes, sir. This is what you tendered. Are you objecting to your testimony here?

Mr. Schuler: All right. We would like to—instead of adding Pages 24 to 30, we would like to again——

The Court: Twenty-five, Line 16 through 30, would that do it?

Mr. Schuler: Well, I think we'd like to add none of that.

The Court: Just omit it all.

Mr. Schuler: Omit all of that from 24 to 30.

[420] The Court: You at least agree with your own objections. All right. Let's go to Mr. James Alexander Floyd.

Mr. Fenton: With respect to Mr. Floyd, plaintiff offers in evidence Pages 1 through 21. This is all of Mr. Floyd's deposition.

The Court: Any objection?

Mr. Schuler: We have nothing further there, and as to objections, there are objections on remoteness on Pages 8, 9 and 10, and on Pages 10, conclusions are stated, Page 10, Lines 4 to 8.

The Court: What about on Page 12?

Mr. Schuler: Page 12?

The Court: Lines 5 through 9, I would assume.

Mr. Schuler: Yes. Also Lines 1 and 2.

The Court: Well, I'm going to let—let me see here, now. I think on Page 10 I'm going to overrule those objections. He was merely stating what he understood the man to have told him. On Page 12—How about the bottom of Page 11? Well, no, that's all right.

Mr. Schuler: The last—the part beginning on Line 24 on Page 11 is part of the answer going over to the top of Page 12, and I think that should be stricken, too, because of his statement being a conclusion.

[421] The Court: Well, it is non-responsive.

Mr. Schuler: It is.

The Court: He asked him what he told him and he said he didn't have any—that's the answer. I'm going to sustain the objection to Line 24, Page 11 through Line Number, oh, I think Line 8, Page 12, I think that last sentence on Line 8 and 9, Page 12 is admissible.

Mr. Schuler: All right. And that's all the objections we have.

The Court: All right. Let's go to Mr. George Taylor.

Mr. Fenton: On Mr. Taylor plaintiff offers into evidence Pages 1 through 33, which is the entire deposition.

The Court: All right, sir. Now, the objections.

Mr. Schuler: On Page 13 there is a conclusion stated.

The Court: What line?

Mr. Schuler: Lines 8 to 12.

The Court: Can a man testify as to what he understood? I'm going to overrule the objection on Page 13. It's what the witness understood, as I understand that testimony.

Mr. Schuler: All right. There is a typographical error on Page 30.

The Court: Page 30?

[422] Mr. Schuler: Yes. There is a reference to Defendants' Exhibit A, and it should be F, Exhibit F.

The Court: Any objection to changing A to F there, Mr. Fenton?

Mr. Fenton: No objection.

The Court: All right. I'm going to change the original of this deposition accordingly.

Mr. Schuler: And there is one other, if I may have just a moment. I think it stretches over several pages here.

The Court: Yes, sir.

Mr. Schuler: On Page 19, Lines 9 through 12—9 through 11, there is a statement based on hearsay.

The Court: Where he says, "I don't think anyone else that have applied for the line"?

Mr. Schuler: That's correct.

The Court: I think that's just a guess, so I am going to sustain the objection to Lines 8, 9, 10 and 11, starting with the last word on Line 8.

Mr. Fenton: That one sentence, Your Honor?

The Court: Just the one sentence. I think he answers the question the first part of it, anyway.

Mr. Schuler: There's one other, Your Honor. On Page 19, starting with Line 13, and continuing over to Page 14.

[423] The Court: Who is Mr. Cloward; is he an employee of T.I.M.E.?

Mr. Hunter: Former terminal manager at T.I.M.E.

The Court: Terminal manager.

Mr. Hunter. Yes. There are objections to the hearsay nature of it, but the series of leading questions has put in issue the deposition which did not appear through the colloquy.

The Court: Are you taking this under the rules that you have got to object to leading questions at the time, or it's waived?

Mr. Schuler: The objection was made, continuing——

Mr. Hunter: Continuing throughout the series of pages that Counsel for——

The Court: Well, now, we are through the questioning.

Mr. Hunter: Then, he commences and he never cures the objection. He just, in effect, restated the same question that the objection was made to originally.

Mr. Fenton: I believe he did cure it, Your Honor. He stated what did you say in reference to further conversations.

Mr. Hunter: There is no foundation yet **[424]** established for the fact that there was any further conversations at this point.

The Court: Well, now, you've made only one or—yes, only one objection to leading questions, although you say he repeats the leading portion.

Mr. Hunter: I thought it was somewhat unnecessary to continuing objecting on the same basis.

The Court: Well, I know, but what questions did he repeat?

Mr. Hunter: "Okay. Now, you say that after the first time you talked to Mr. Cloward you also talked to Mr. Cloward on several other occasions".

Mr. Schuler: On Page 13.

Mr. Hunter: Page 13, Line 13, the original leading question.

The Court: Yes, sir.

Mr. Hunter: "What did you say in reference to further conversations you had with Mr. Cloward after the first one". Same question.

The Court: That would be leading in view of the objection. All right.

Mr. Hunter: Yes, same question.

Mr. Schuler: Then, Your Honor, I think if you will look on down to Page 14 and 15. there never is a time or place indicated and the objection is not cured.

[425] The Court: Well, I made a notation of your objection. I'm going to have to examine this testimony in detail and it goes through what page and line?

Mr. Schuler: I think it goes all the way over to Page 15, Line 17, I believe it is.

The Court: All right. Line 17. All right. I have got a notation. I'll just have to put that in there and look at the testimony some more before I can rule on that.

Anything further on Mr. Taylor's deposition?

All right. Let's go to Mr. Marvin Richard Vestal.

Mr. Fenton: On Mr. Vestal plaintiff offers in evidence Page 1 through 33, the entire deposition.

The Court: All right. Are there objections?

Mr. Schuler: Just a moment, Your Honor.

The Court: Yes, sir.

Mr. Schuler: I think that's all we have there, Your Honor.

The Court: All right, sir.

Mr. Fenton, Now, with respect to our last person listed, Mr. Alley, we will not offer his deposition.

The Court: We will go now to the Nashville depositions.

Mr. Hunter: Okay, Your Honor, there was one further deposition taken in September by the company in Los Angeles involving a Jack Starr. We would offer that at this **[426]** time.

The Court: All right. That is in your list. Let me give you Mr. Alley and hand me Mr. Starr. Hold up just a minute so I can get the deposition.

All right. I have before me the deposition of Mr. Jack Starr. As I understand it, the defendant T.I.M.E. wishes to offer portions of that.

Mr. Hunter: Yes.

The Court: All right. What portions?

Mr. Hunter: The entire deposition.

The Court: Are there any objection?

Mr. Fenton: No.

The Court: It's admitted.

Mr. Hunter: Now, Your Honor, could we just have one second? May I ask plaintiff a question? If he is withdrawing Mr. Alley's deposition, is he withdrawing the claim on his behalf?

Mr. Fenton: Well, we didn't list a claim on behalf of Mr. Alley as an individual discriminatee.

Mr. Hunter: Further depositions we have taken in Los Angeles will not be needed to be submitted at this time, either.

Mr. Wells: Do I understand that there is no contention with respect to any of the matters set out in the Alley deposition?

[427] Mr. Fenton: That's correct.

The Court: All right.

Mr. Hunter: Now, in response to that, we would withdraw, as we indicated on the pre-trial order, the deposition of Mr. Powell.

The Court: Well, that hasn't been tendered today, has it?

Mr. Hunter: No, but it is on the pre-trial order.

The Court: I'm going to consider what you have offered today rather than on the pre-trial order, but I think you are correct in making the record clear on that.

I believe we want to go to Mr. Gibbs.

(Discussion between Court and Counsel off the record.)

The Court: All right. These Nashville depositions are in two volumes. Mrs. Kiker has tabbed the first page of each witness' testimony, so I would suggest we go through as if they were in separate binders, witness by witness, and have the government tender what they desire as to each witness, and then we will go to the defendant and they can tender what they want to and make objections as they see fit and we will have each witness listed separately.

All right. Let's talk about Mr. Gibbs here.

Mr. Fenton: On Mr. Gibbs plaintiff offers in evidence Pages 1 through 50 to Line 11, Page 56, starting at **[428]** Line 21 and going through Page 59 to Line 10, and then on Page 62, beginning at Line 25 through Page 66 through Line 17. Then, beginning on Page 70 at Line 16 through Page 74 at Line 16, and then beginning on Page 77 at Line 10 and through Page 80, Line 7. Then, beginning on Page 90 at Line 6 through Page 95 at Line 13.

The Court: All right, sir. Defendants have anything to offer or any objection to make?

Mr. Schuler: On Mr. Gibbs we do have some to offer. Page 59, Lines 11 to 25, and continuing over to Page 62 the end of the page, Line 25.

The Court: All right, sir.

Mr. Schuler: In addition, all of the cross-examination on Pages 95 to 108, and Mr. Gibbs was recalled and it appears in Volume 2 of this, and I will save it for Volume 2 if you want me to.

The Court: Wouldn't it be best for me to read it all together instead of having to pick it up?

Mr. Schuler: Well, I think it should be read in order because he was—several witnesses were recalled in the nature of rebuttal.

The Court: That's fine. All right.
We will now go to Mr. Dallas Ray Anderson.

Mr. Fenton: On Mr. Anderson plaintiff offers in evidence Pages 111 through 142 at Line 20 and then **[429]** beginning on Page 155, Line 6, through Page 157, Line 2.

Mr. Schuler: We would offer all the cross-examination of Mr. Anderson on Pages 145 to 152 and 157 and 158, and that's all we have to offer at the moment. Mr. Anderson was likewise recalled in the nature of rebuttal, and that appears in Volume. 2. I will point it out when we get there.

The Court: All right. Let's go to Mr. Wells. I don't mean to overlook you, Mr. Wells. You speak up when you want to introduce something.

Mr. Wells: Thank you, sir.

The Court: We will go now to Mr. Jasper Hampton.

Mr. Fenton: On Mr. Hampton plaintiff offers in evidence Pages 159 through 161, Line 20, and then Page 163 through 165, Line 9.

The Court: All right. Anything from the defendants?

Mr. Schuler: We'd like to offer Page 162, Lines 23 to 25. Let me check that just a moment.

The Court: Why don't we just give all of that one unless there's something objectionable to the part you want to omit. It's just four or five pages of the whole deposition. Is there anything objectionable, or are you prepared to answer that?

Mr. Schuler: Well, let's see.

[430] The Court: See, really all he's omitting is a little on Page 165 and a little on Page 166, and then, the top part of 162.

Mr. Schuler: I think Your Honor is right. We will put back in everything that Mr. Fenton left out.

The Court: So I am going to examine all of Mr. Hampton. Let's go to Mr. James Tilford Adamson.

Mr. Fenton: On Mr. Adamson, plaintiff offers Pages 167 through 174.

Mr. Schuler: We have nothing to add to that.

The Court: All right. Go to Mr. Lail.

Mr. Fenton: Pages 175 through 181.

Mr. Schuler: Nothing further to add to that.

The Court: Mr. Mince.

Mr. Fenton: On Mr. Mince, plaintiff offers in evidence Pages 182 through 189, Line 20.

Mr. Schuler: We would add from the point that Mr. Fenton left off, 189, Line 25, or Line 21, over to 193, Line 7. I don't know if that's the end of it or not.

The Court: Well, not quite. There's a little more there. You have some cross-examination down in there that you didn't put in. Just go through 194 and I'll **[431]** read the whole thing.

Mr. Schuler: As a matter of fact, on the pre-trial order I do have listed the remainder of 193, which is the remainder of the cross-examination.

The Court: Let's go to Lee Francis Jones.

Mr. Fenton: On Mr. Jones, plaintiff offers in evidence Pages 195 through 199, Line 14. On Page 201, beginning at Line 3 through Page 202 at Line 9, and on Page 208, beginning at Line 4 through Page 209, Line 11.

The Court: What was the last page?

Mr. Fenton: Page 209, Line 11. Page 209, Line 19 through 210, Line 13.

Mr. Schuler: We have two parts to add there, Your Honor. Page 202, Lines 10 to 25, ending on Page 203, Line 8. Page 206, starting at Line 2, continuing over to Page 208, Line 4.

Mr. Wells: If Your Honor please, we would add Pages 211, Line 7 through 214, Line 1.

The Court: Anything further?
All right. Let's go to Mr. Thomas Richard Johnson, which completes the first volume, I believe.

Mr. Fenton: On Johnson plaintiff offers in evidence Page 215 through Page 222, Line 15; Page 222, Line 20 through 227, Line 11; Page 227, Line 23 through 234, Line 5.

Mr. Schuler: We have nothing to add, **[432]** Your Honor.

Mr. Wells: Nor do we.

The Court: All right. Let me get the second volume out here. We will go to Mr. Crutchfield.

Mr. Fenton: On Mr. Crutchfield, plaintiff offers in evidence Pages 235, Lines 1 through 18, and Page 237 beginning at Line 17, through 244 and Line 3.

Mr. Schuler: Well, let's see here. Again, we are putting it all back in, Your Honor, from Page 235 starting at Line 19 going over to 237 from Line 1, then—or going over to 237, Line 16, and then from Page 244, Line 7 going to Line 15.

The Court: All right, sir. That gets all of it.

Mr. Schuler: Yes, all of the deposition.

Mr. Fenton: On Mr. Davis, plaintiff offers in evidence Pages 246 through 254, Line 3 and Page 258 through 262, Line 11.

Mr. Schuler: We have nothing further.

Mr. Wells: We have on that, if Your Honor please, Page 254, Line 3, through 258—I'm sorry. That should be 254, Line 5, through 258, Line 1.

The Court: All right. Mr. Luther Alvin Watson.

Mr. Fenton: On Mr. Watson plaintiff offers **[433]** in evidence Page 264 through 285, Line 21; 287, Line 3 through 17, and 289 beginning at Line 7 through 293, Line 1.

The Court: All right. Defendants?

Mr. Schuler: Nothing to add there, Your Honor.

Mr. Wells: We would add to Watson 293, Line 3 to 294, Line 13.

The Court: Line 13 or 14?
I wasn't questioning you as much as I just didn't understand what you said.

Mr. Wells: I said 13, but I would like to check. Through Line 13.

The Court: Line 14 says that's all. We go to Mr. Raymond Leslie Rucker.

Mr. Fenton: On Mr. Rucker plaintiff offers in evidence Pages 296 through 309.

Mr. Schuler: We have nothing to add there, Your Honor.

The Court: All right. Now, are we stipulating Mr. Moore?

Mr. Fenton: Yes, sir.

The Court: Go next to Wallicia Quovadis Majors.

Mr. Fenton: Mr. Majors, plaintiff offers in evidence Page 218 through 227.

[434] Mr. Schuler: We have nothing further there.

The Court: And we are stipulating Mr. Gibbs. Then, we get down to Mr. Homer W. Burns.

Mr. Fenton: On Mr. Burns, plaintiff offers in evidence Pages 335 through 361.

Mr. Schuler: Nothing further there.

The Court: I believe we stipulated Mr.——

Mr. Wells: Pardon me, Your Honor. Was it intended to skip Mr. Gibbs? I think that is what Mr. Schuler wanted to get in.

Mr. Fenton: I believe that is Kenneth Gibbs.

Mr. Schuler: Yes, Kenneth Gibbs was left out by the plaintiff. We have no objection to that.

Mr. Wells: All right.

The Court: Well, I guess the next is Mr. Levi Gant.

Mr. Fenton: Mr. Gant, plaintiff offers in evidence Pages 381 through 390.

Mr. Schuler: Nothing further to add to that.

The Court: Mr. William Edward Dobbin.

Mr. Fenton: Plaintiff offers in evidence 391 through 397.

[435] Mr. Schuler: We have nothing further there, either.

The Court: Mr. James E. Keeling.

Mr. Fenton: On Keeling plaintiff offers in evidence Page 398 through 404, Line 13.

Mr. Schuler: We would like to add Page 405, Lines 4 to 16.

The Court: Next, Mr. James Wallace.

Mr. Wells: Pardon me, please, sir.

The Court: Yes, sir.

Mr. Wells: On Keeling I would add Page 404, Line 16 through 405, Line 1.

The Court: All right. Anything further?

Mr. Fenton: On Wallace, plaintiff offers in evidence Page 407 through 416.

Mr. Schuler: We have nothing further there.

The Court: Now, we go to the second deposition of Mr. Kenneth Neil Gibbs, Jr., I believe.

Mr. Fenton: On Mr. Gibbs' second deposition plaintiff offers in evidence Page 431, Line 25, and then 432, beginning on Line 16 through 434, Line 18.

The Court: All right.

Mr. Schuler: Let's see, let me have just a moment, Your Honor. I think there is something further back **[436]** in that volume in the 300 series. Yes, Mr. Gibbs was recalled at Pages 328 through 334 and we would like to rely on that.

The Court: Now, this is the same Gibbs.

Mr. Schuler: Kenneth Neil Gibbs, Jr., the terminal manager at Nashville.

The Court: What pages did you want, 328 through what?

Mr. Schuler: 328 through 334.

The Court: All right, sir.

Mr. Schuler: And also, Pages 427 to 431, and I have designated the last part of 433 and 434, but I believe Mr. Fenton already has that in.

The Court: Yes, sir.

Mr. Schuler: So I will say I will go to 435, Line 3 and continue over to 436, Line 22.

The Court: Well, I believe that gets us down to Mr. Anderson.

Mr. Wells: I believe they skipped one part that we want in there, Judge.

The Court: All right. Let's pick it up now.

Mr. Wells: On Mr. Gibbs at 434, Line 21.

The Court: Line 21. All right, sir.

Mr. Wells: Yes, sir. Through Line 25.

The Court: All right, sir. Now Mr. Dallas **[437]** Ray Anderson.

Mr. Fenton: On Mr. Anderson's deposition, this is his second deposition, plaintiff offers in evidence Page 448, Line 3 through Page 454, Line 2.

The Court: 454, Line 2? All right, sir.

Mr. Schuler: We would offer all the previous pages, 438 through 437.

Mr. Wells: We would offer 454, Lines 5 through 16.

The Court: All right, sir. I believe we are now ready to go to the Atlanta depositions. C. W. Allison. That's all in one volume, I believe, isn't it?

Mr. Fenton: Right.

The Court: All right.

Mr. Fenton: Mr. Allison, plaintiff offers in evidence 1 through 52, Line 20; Pages 59 through 82, Line 17 and Pages 86 at Line 20 through Page 87, Line 10, Page 117, Line 15 through Page 119, Line 12; Page 121——

The Court: Let me catch up with you. Now, go ahead.

Mr. Fenton: Page 121 through 123, Line 21; Page 132, Line 18 through Page 133, Line 18; Page 135, Line 17 through Page 138, Line 17, and Page 140 through Page 143, Line 5.

Mr. Schuler: I'd like to inquire of Counsel, **[438]** is that Page 140 or Page 142?

Mr. Fenton: Excuse me. 142 through 143, Line 5.

The Court: All right. Defendant T.I.M.E.?

Mr. Schuler: All right. We would like to add, starting with Page 82, Line 18 through Page 86, Line 19. We would also like to add Page 87, Line 12, continuing to Page 106, Line 16; from Page 19, Line 13 through Page 120, and from Page 123, Line 22 through 126, Line 16; from Page 128, Line 1 to Page 132, Line 17; from Page 133, Line 20 to Page 135, Line 16, and from Page 138, Line 18 to Page 141, Line 25.

Mr. Wells: To which we would add Page 106, Line 18 through 117, Line 11.

The Court: All right, sir. Does that complete Mr. Allison? All right: Mr. Roy Gibson.

Mr. Fenton: On Gibson, plaintiff offers in evidence Pages 1 through 17, Line 24 and Pages 22 through 28.

Mr. Schuler: We'd like to add the material in the middle from Page 17, Line 24 to Page 22, Line 4.

The Court: That completes that one. All right. Mr. Joseph Amos.

Mr. Fenton: On Joseph Amos the plaintiff offers in evidence Pages 1 through 12, Line 10 and Page 12, Line **[439]** 20 through Page 16, Line 17.

The Court: Let's see. Through Page 16, Line 17?

Mr. Fenton: Correct.

The Court: All right.

Mr. Schuler: We would like to add from Page 16, Line 18 to Page 24, Line 20.

The Court: That completes Mr. Amos. So we go to Mr. Theodus Perry.

Mr. Fenton: On Mr. Perry plaintiff offers in evidence Pages 1 through 19.

Mr. Schuler: Nothing further.

Mr. Wells: Just a moment. What happened to Mr. Batchelor?

Mr. Fenton: Mr. Batchelor was inadvertently put in this list. A summary of the deposition was submitted in lieu of the deposition itself.

The Court: It is—it was in the pre-trial order, but not in the list you handed me this morning.

Mr. Wells: Mr. Grady Amos appeared as a live witness, therefore, his deposition is not before the Court?

Mr. Fenton: Correct.

The Court: All right. Mr. Calhoun.

Mr. Fenton: On Calhoun, plaintiff offers in evidence Pages 1 through 23, Line 21.

[440] Mr. Schuler: We have nothing further there, Your Honor.

The Court: All right. Let's go to the Chicago depositions. Mr. Drobny.

Mr. Fenton: On Mr. Drobny, plaintiff offers in evidence——

Mr. Wells: Excuse me. I take it you're not offering the deposition of Stroud or Swanson in Atlanta?

Mr. Fenton: We are not offering Mr. Swanson. A summary of Mr. Stroud's deposition has been prepared in lieu of submitting his deposition.

The Court: All right.

Mr. Fenton: On Mr. Drobny, plaintiff offers in evidence Pages 1 through 99.

Mr. Wells: If your Honor please, I'm sorry to slow things down, but I want to see where we stand.

The Court: Let's get them as we go through it.

Mr. Wells: On the Atlanta—on Swanson, as I recall, he was a shop employee. Are you offering any testimony with respect to the mechanics in Atlanta?

Mr. Fenton: Well, we are not offering Mr. Swanson's deposition.

Mr. Wells: Or any of the matters that are set out there?

[441] Mr. Fenton: That's correct.

The Court: All right. Pages 1 through 99 on the Drobny deposition has been offered by the government. Does anybody else have anything further, or is that the deposition? That's about all of it. Any objection?

Mr. Schuler: I believe it is. We have nothing further to offer.

The Court: All right. Let's go to Mr. Robert V. Wolf.

Mr. Fenton: Mr. Wolf, plaintiff offers in evidence Pages 1 through 13, Line 14; Page 15, Line 2, through Page 19, Line 16, and Page 34 through Page 53.

Mr. Schuler: We offer in the rest of it, Your Honor.

The Court: All right. This entire deposition is in.

Mr. Schuler: Yes.

The Court: I believe the next one is Mr. Cleo Travis Harris.

Mr. Fenton: On Mr. Harris, plaintiff offers in evidence Pages 1 through 6, Line 10.

The Court: Anything further?

Mr. Schuler: We would like to add Pages—the cross-examination on Pages 7 and 8.

The Court: All right. Mr. John L. Garrett.

[442] Mr. Fenton: On Garrett, plaintiff offers in evidence Page 1 through 3.

The Court: One through three?

Mr. Fenton: Correct.

Mr. Schuler: And we would add Pages 4 and 5, and Page 15, Line 18 to Page 17, Line 25.

The Court: That takes care of Mr. Garrett. If so, we go to Daniel J. Fryer.

Mr. Fenton: On Mr. Fryer plaintiff offers in evidence Pages 1 through 26.

Mr. Schuler: Let's see, is t the entire deposition?

Mr. Fenton: Correct.

The Court: Wait a minute.

Mr. Schuler: We have nothing further.

Mr. Wells: If Your Honor please——

The Court: I don't have but fifteen pages of that deposition. Wait a minute. I don't have Mr. Fryer. I was looking at Mr. Conner. I don't have Mr. Fryer's up here.

Mr. Wells: Judge, while he's checking that, can I go back to Garrett?

The Court: To which one?

Mr. Wells: Garrett.

The Court: Yes, sir. I have it before me.

[443] Mr. Wells: Page 28. These are unnumbered lines starting with cross-examination.

The Court: The union wants Page 28? The cross-exam. How far?

Mr. Wells: Concluding that cross-examination through Page 30, the middle of Page 30.

The Court: All right, sir. Now, let me have Mr. Fryer again. That is one through——

Mr. Fenton: One through twenty-six.

The Court: That is the entire deposition, so that's fine. Now, on Mr. Conner.

Mr. Fenton: On Conner, plaintiff offers in evidence Pages 1 through 13.

The Court: Is that the entire deposition?

Mr. Fenton: Yes, sir.

Mr. Schuler: Nothing further there.

The Court: All right. Now, I assume there is no objection, or you would have made them as we go through this.

Mr. Schuler: That's correct, Your Honor.

The Court: Okay. The deposition of Mr. Chaplin.

Mr. Schuler: Your Honor, before you pass Chicago, we'd like to offer the deposition of Mary J. Castrale, Page 1 through 26.

[444] The Court: One through what?

Mr. Schuler: One through twenty-six.

The Court: Now, wait a minute. Yes. Anything further on that deposition before we leave the Chicago depositions?

All right. We'll go to Oklahoma.

Mr. Wells: So I understand the record, I take it nobody tendered the Hurt deposition?

Mr. Fenton: That's correct.

The Court: All right. How about Mr. Chaplin?

Mr. Fenton: From Mr. Chaplin plaintiff offers in evidence Page 1 through 58, Line 6.

Mr. Schuler: Your Honor, it might save time there. We want to have the entire deposition put in. If the plaintiff wants to indicate particular parts of it, that's all right with us, too.

The Court: All right. Do you want to designate the part as your tender and just let him tender the rest of it? Go ahead. I'm going to read the whole thing.

Mr. Fenton: Yes. Page 1 through 58, Line 6; Page 77, Line 8 through Page 94, Line 21 and Page 111 through 116, Line 14; Page 126, Line 7 through 129, Line 4.

Mr. Schuler: We would like the rest of the deposition put in, please, sir.

[445] The Court: All right. That takes care of Mr. Chaplin. Let's go to Mr. Walter.

Mr. Fenton: On Walter plaintiff offers in evidence Page 239 to Page 268, Line 20.

Mr. Schuler: We would add Pages 269 and Pages 280 through 285, plus 287 and 88.

The Court: All right.

Mr. Wells: May I have just a moment, please, sir?

The Court: Yes, sir.

Mr. Wells: I have nothing to add to Walter. The form in which the record is made, it includes under the same cover the depositions of Jackson and Henderson, which I take it are not—and Harrison, which are not tendered?

Mr. Fenton: Mr. Henderson's deposition was summarized. The other two that you mentioned are not tendered.

The Court: All right. That takes us down to Don Capshaw.

Mr. Fenton: On Mr. Capshaw plaintiff offers in evidence Pages 289, Line 23 through Page 308.

Mr. Schuler: We'd like to put in the remainder of that deposition.

The Court: All right, sir. That takes care of, I believe, of Oklahoma City, does it not?

[446] Mr. Wells: Except Mr. Highfelt. I take it, it, likewise, is not tendered, right?

Mr. Fenton: Correct.

The Court: All right. In Dallas, Mr. Cathey.

Mr. Fenton: On Mr. Cathey, plaintiff offers in evidence Page 1 through 76, Line 19 and Page 123 through 196, Line 18.

Mr. Schuler: We would like to add the cross-examination on Pages 76 to 89.

The Court: Anything from the union?

Mr. Wells: I have nothing on Cathey.

The Court: All right. We'll go to Mr. Miller.

Mr. Fenton: Plaintiff offers in evidence Pages 1 through 27.

Mr. Schuler: We have nothing there, Your Honor.

The Court: And the union?

Mr. Wells: Just a moment, Your Honor.

The Court: Yes, sir.

Mr. Wells: We would tender the entire deposition.

The Court: All right. Go to San Antonio depositions. Mr. Robert M. Mitchell.

[447] Mr. Fenton: On Mr. Mitchell, plaintiff offers into evidence Pages 1 through 22.

Mr. Schuler: Your Honor, excuse me just a moment.

The Court: Yes, sir.

Mr. Schuler: And there was one additional deposition there in Dallas that we would like to tender.

The Court: All right. Let's get it in at this point then.

Mr. Schuler: Robert Dickens.

The Court: Robert Dickens?

Mr. Schuler: Page 1 to 37.

The Court: Just the one page, or did I misunderstand?

Mr. Schuler: One through thirty-seven.

The Court: All right. Anybody else wish to put anything in?

Mr. Wells: While we are in Dallas, Price and Hicks, having both testified, their depositions are not before the Court, as I understand it.

Mr. Fenton: That's correct.

The Court: Pages 1 through 37 will be read by the Court on the Dickens' deposition. That puts us down to Mr. Robert M. Mitchell.

Mr. Fenton: On Mr. Mitchell, plaintiff **[448]** offers in evidence Pages 1 through 22; Page 29, Line 21, through Page 32, Line 1; Page 33, Lines 1 through 19, Page 41, Line 15 through Page 47, Line 22.

Mr. Schuler: We would like to add the remainder of the deposition.

The Court: All right. Mr. Barnes.

Mr. Fenton: On Barnes, Pages 1 through 28, Line 24.

The Court: One through twenty-eight?

Mr. Fenton: Yes, 1 through 28, Line 24. Page 78, through 79, Line 12 and Page 92, Lines 11 through 25.

Mr. Schuler: We would like to add the remainder of the deposition.

The Court: All right, sir. S. P. Walker, I believe, is next.

Mr. Fenton: On Walker plaintiff offers in evidence Pages 1 through 12, Line 15.

Mr. Schuler: We would offer all of Pages 12 through 14.

The Court: Is that the remainder? Yes, that is the remainder, isn't it?

All right. Mr. Martinez.

Mr. Schuler: Mr. Martinez, plaintiff offers in evidence Pages 1 through 13, Line 17.

Mr. Schuler: We would offer all of Pages **[449]** 13 through 16.

The Court: Anything further from the San Antonio depositions?

All right. We'll go to the Memphis, Tennessee depositions and we will start with Don Allen.

Mr. Fenton: From Mr. Allen plaintiff offers in evidence Pages 1 through 18.

Mr. Schuler: We have nothing further.

The Court: That's the entire deposition, I believe, there, isn't it?

Mr. Wells: May I have just a minute to get these Memphis ones in order, Your Honor?

The Court: Yes, sir. You got the list there, or you want me to call them out for you? Go ahead and get them in order. We'll hold up here a minute.

Mr. Wells: Thank you, Judge.

The Court: All right, sir. We are now down to Mr. Arthur Leon Thornton.

Mr. Fenton: On Mr. Thornton plaintiff offers in evidence Pages 1 through 30, Line 15, and Page 43, Lines 12 through 24.

Mr. Schuler: We'd like to add the remainder of that deposition.

The Court: James L. McNeal.

Mr. Fenton: On McNeal, plaintiff offers **[450]** in evidence Pages 1 through 23, Line 14.

Mr. Schuler: We have nothing further.

The Court: Mr. Clayborn Moman.

Mr. Fenton: On Moman, plaintiff offers in evidence Pages 1 through 21.

Mr. Schuler: We have nothing further there, either.

The Court: Okay. Warren Chase.

Mr. Fenton: We are not offering Mr. Chase's deposition.

The Court: Anybody wish to offer anything from Mr. Chase's deposition?

James H. Walker, I believe, is next.

Mr. Fenton: Plaintiff offers in evidence Pages 1 through 32.

The Court: Thirty-two?

Mr. Fenton: Correct.

Mr. Schuler: We have nothing further.

Mr. Wells: Nothing.

The Court: Mr. W. G. Gately.

Mr. Fenton: On Mr. Gately plaintiff offers in evidence Pages 1 through 30.

Mr. Schuler: We have nothing further.

The Court: Mr. Fontain Earnest Yount, Jr.

Mr. Fenton: Mr. Yount, plaintiff offers **[451]** in evidence Pages 1 through 35.

Mr. Schuler: We have nothing further on that.

Mr. Fenton: Now, Charles Edwin Taylor was inadvertently included in here. His deposition was also summarized.

The Court: You mean on the pre-trial order?

Mr. Fenton: Right.

The Court: I am using the list. Mr. Robert T. Jones, Sr. is next.

Mr. Fenton: On Mr. Jones plaintiff offers in evidence Page 1 through 6, Line 20.

The Court: Twenty?

Mr. Fenton: Correct.

Mr. Schuler: We would add Page 6, Line 23 to Page 8, Line 4.

The Court: Mr. Houston is not to be offered?

Mr. Fenton: That's correct.

The Court: Does that complete the depositions for the plaintiffs?

Mr. Fenton: That completes our depositions, Your Honor, and as I stated before, of course, we offer the exhibits which were identified through these depositions.

[452] The Court: Yes. Where are these exhibits, what box are they in around here? I want to separate them.

Mr. Fenton: I think most of them are identified as to what cities they came from. Most of them are in packets like this, Your Honor.

The Court: Well, we'll go off the record.

(Discussion between Court and Counsel off the record.)

The Court: Mr. Wells, have you got some——

Mr. Wells: Yes, Your Honor. I missed one. The last deposition.

The Court: They are not going to offer that, Mr. Houston, I believe.

Mr. Wells: No, Jones.

The Court: Oh, pardon me. Mr. Jones, they want pages 1 through 6, Line 20 from the plaintiffs, and Page 6, Line 23 through Page 8, Line 4 for T.I.M.E.

Mr. Wells: I want Page 8, Line 8 through the end of the deposition. I think that makes the whole works.

The Court: I believe it does, too, with the exception of a line or so.

Mr. Wells: Houston is not——

The Court: Not tendered.

Mr. Schuler: Your Honor, I'd like to have a few minutes on that.

The Court: Yes, sir.

[453] Mr. Schuler: Houston's name originally was on the pre-trial order for the plaintiff, and we had wanted to put in a few pages, so I'd like to review it briefly to see.

The Court: All right. We'll take a recess here and give you a chance to do it now. You have some interrogatories. What is the best way to get those in the record, like we are doing the depositions, or do you want to read them or what?

Mr. Fenton: That will be preferable to us, Your Honor, just read the numbers that we are offering into the record, rather than the interrogatories and answers themselves, since they are a part of the pleading file.

The Court: I wonder if we—during the recess would you ask the—are there several sets of interrogatories or just——

Mr. Fenton: The one that we are offering is just one set of interrogatories, and one set of answers.

The Court: Would you assist the clerk in getting those out during the recess and we will come back and take those that way.

Now, when we get those in the record, where is the plaintiff?

Mr. Fenton: That will conclude our case in chief, Your Honor.

The Court: All right.

(Recess)

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[454] The Court: All right. Plaintiff may proceed.

Mr. Fenton: Your Honor, we would like to offer into evidence certain interrogatories.

Mr. Schuler: Your Honor, before doing that, there was one remaining deposition that we wanted to review. That was the deposition of Mr. Houston at Memphis.

The Court: I have it right here.

Mr. Schuler: And we would like to introduce Page 2 through Page 4, Line 11.

The Court: Anybody else got any portion of the Houston deposition they want introduced?

All right. Now, let's go to the interrogatories. Which ones does—I have got them marked here in the file.

Mr. Fenton: These are interrogatories the plaintiff served on defendant T.I.M.E.-DC on March 29th, 1971, and answers thereto provided by the company on May 25th, 1971, and in their answers the company set out the interrogatory before the answer so we can just use——

The Court: Yes, sir. There ought to be a rule to that effect. I am sure glad to see it's done that way. Which ones are you tendering?

Mr. Fenton: The ones we are tendering are numbers 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 21, 22, 23 and 24.

[455] Now, with respect to the company's answer to Interrogatory Number 1, and that part of the answer beginning at the very bottom of Page 2, they set out National Master Freight Agreement in Southern Conference Area, Local Pick-up Delivery Supplemental Agreement for the period of 1/1/70 to 6/30/73, and right after that they quote an article from the National Master Freight Agreement. They have Article 1, Section 2, with the consent of the company. That should be Article 2, Section 2, from the National——

The Court: At the bottom of Page 2?

Mr. Fenton: Right.

The Court: I am just going to change the original if there is no objection.

Mr. Fenton: I am referring to the very bottom line on Page 2.

The Court: Interrogatory Number 1.

Mr. Fenton: Which says Article 1, Section 2, should be Article 2, Section 2.

Mr. Schuler: We are agreeable to that, Your Honor.

The Court: All right. I am just going to change the original accordingly. Now, does——

Mr. Wells: If Your Honor please, we object on behalf of the defendant unions to the Court's consideration of that part of the answer to Interrogatory Number 1, which **[456]** calls for and is a conclusion with respect to the legal effect of the contract.

The Court: The most that I see here, they are just quoting the contract.

Mr. Wells: Well, but they were first—we have no objection to the provisions of the contract being before Your Honor, and Your Honor interpreting those contracts. We do object to this form of eliciting a conclusion, for the record, of whoever answered these interrogatories, as to what the contract means. The contract speaks for itself and should be interpreted by the Court.

The Court: Well, I don't see that they have done that in their answer, but I haven't examined it carefully. If they have, you are correct.

Mr. Wells: The question is how does the company interpret any provision of any present or past contract with respect to prohibiting various people to do so and so. They answered yes.

Mr. Fenton: Your Honor, the company is a party to the contract, and of course, one of the issues in this case is whether or not the seniority system may have an adverse effect on certain alleged discriminatees. Certainly, as a party to that contract, the company is in a position to give its interpretation as to what effect the provisions of that contract have.

[457] Mr. Wells: If Your Honor please, they are not in a position to interpret it for us.

The Court: Well, I don't know as I interpret the question as you do. It is just does the company interpret any provisions. You've got a contract that they think relates to that field set forth in the contract.

Mr. Wells: It's up to the Court to interpret the legat effect of it.

Mr. Fenton: Well, Your Honor, we believe that the way this contract has been interpreted in the past, and the way it is interpreted at the present by one of the parties, is very relevant to this action.

The Court: Let me examine it just a little more here. You're talking about Page 1 alone here, as I gather. The rest of the answer is nothing but quoting the contract itself.

Mr. Wells: Right.

The Court: Right.

Mr. Wells: I am referring really to the first—to the first word in the answer.

The Court: Yes.

Mr. Wells: That other phrase is an interpretation.

The Court: Well, I'll tell you what, I am going to admit that, overrule the objection, except whether **[458]** or not the company is legally bound by the way they interpret it is a matter of law for the Court, but I think it is proper evidence for the company to say that we feel we are bound in a certain manner. So I will admit it for that purpose, but that doesn't mean as a matter of law that they are legally bound. That's just their interpretation, and not a legal finality.

Mr. Wells: Though these other objections, if Your Honor please, I am referring now to the last paragraph on Page 1, where they are listing various contracts, they refer to the National Mechanics Agreement with Local Union 327 for a period of 4/1/58 to 3/1/61, to which we object for the reason that it is remote in time, and for the further reason that it is a contract with Local 327, and these interrogatories have to do with the consolidated Civil Action Number 5-868, which you will recall was filed over there in Tennessee, and then moved over here, and consolidated with the big case.

Now, they are suing 480 over there, but they are bringing before you an ancient contract with Local 327. We say that is wholly irrelevant and immaterial and should be stricken.

Similarly, I will make similar objections with respect to the Mechanics Agreement with Local 327 for the period 2/1/61 to 1/31/64, which is on the second page, and I thought, although in candor, it is not quite as remote when you get up **[459]** to 2/1/64 to 1/31/67, but the objection will be—should be lodged in the record at the separate objection to each of those contracts for the reasons stated.

The Court: All right.

Mr. Fenton: Your Honor, at the time that the company had these contracts, Local Union 327 of the Teamsters represented the servicemen at the Nashville terminal. Now, at the present time, Local 480 represents the servicemen but at the time these contracts were in effect they were represented by Local Union 327, and certainly these contracts are relevant. They are relevant to show a historical pattern or practice of discrimination against black servicemen at that terminal.

The Court: I'll overrule the objection. I agree with Counsel on that.

All right. Now, anybody else want to tender any further questions on these interrogatories at this time, or do you want to defer it until later or——

Mr. Schuler: We have indicated in the pre-trial statement that we want to rely on the remaining interrogatories simply to give the Court a complete picture as to what was asked. That would be Interrogatories 9, 16, 18, 19 and 20.

The Court: All right. For the purpose of the record, the entire interrogatories are introduced and **[460]** subject to the limitations I placed on the admissibility of the legal interpretation a moment ago, of course.

Mr. Wells: If Your Honor please, I will call your attention to the fact that Interrogatory 2 and 3 also call for the company's interpretation of what contract language means as a matter of law, and there is the same objection previously stated.

The Court: My ruling will be the same. I'm not going to construe that as a legal interpretation, but as a practical way in which they operated under the contract, or feel they should operate under it. Now, anything further from the government?

Mr. Fenton: Your Honor, that concludes the government's case in chief.

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[464] **ROY M. WILKINS**

called as a witness at the instance of the defendant T.I.M.E.-DC, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schuler

Q. Will you state your full name for the record, please? A. Roy M. Wilkins.

Q. What is your business address, Mr. Wilkins? A. Post Office Box 2550, Lubbock, Texas.

Q. What company are you with and what is your position? A. T.I.M.E.-DC. I am president of that organization.

Q. How long have you been president of that organization, Mr. Wilkins? A. Since September of 1971.

Q. And how long have you been with T.I.M.E., or any of its predecessors? A. Twenty years.

Q. Would you briefly trace your history in the motor carrier **[465]** industry? A. I have first started in the business in 1932 with an organization called Hayes Freight Lines, which is no longer a company as such, and was with that organization in various capacities. I started out as a clerk, dock man, a driver.

Also, during my employment with them, I went to the University of Illinois and secured a degree thereafter, which I went back with the company and worked for them as an auditor.

In 1941 I left that organization and went with Horton Motor Lines in Charlotte, North Carolina as a safety supervisor. That company became a part of a merger into what is today Associated Transport, Incorporated, New York City. I served there as supervisor of safety and ultimately as a director of safety and personnel for the company, leaving them in 1951. I went to Nashville, Tennessee with the Super Service Motor Freight Company as a director of safety and insurance, ultimately be-

coming a vice president of operations for that organization, which was acquired by the T.I.M.E. Freight operation in 1964. At that time I moved to Lubbock, Texas as a director of terminals. In 1969, which was the time of the merger into T.I.M.E.-DC, I became a vice president of the Southern Region of that organization, and in 1970 was vice president of planning and research, and then in 1971 became president of the company.

Q. What are your responsibilities generally as president? A. Well, my responsibilities, of course, are to the chief **[466]** executive officer, and the Board of Directors of our company in terms of conducting the daily operations of our organization.

Now, this is all phases of the organization and I work through our executive staff, which consists of an executive vice president, vice president of marketing and sales, vice president of maintenance and property, vice president of operational services, vice president of finance, vice president of traffic and vice president of planning and management controls; the conducting of the daily affairs of the company through this organization that I operate.

Q. Through what officer or key employee are the labor relations and personnel matters handled? A. We have a director of industrial relations and personnel, Mr. Jim Henry, who reports directly to our executive vice president in the organization, and working with him we have a manager of personnel, Mr. Chuck Hutchison, who works directly for Mr. Henry. This is the group that administers personnel and labor practices.

Q. How generally are the personnel and labor relations and industrial relations policies originated and implemented within the company? A. The procedures and practices that we are using really originate with this group in industrial relations, and personnel in terms of their recognition of perhaps need and change. They are submitted, of course, through our vice presidents' staff. **[467]** In other words, they come directly to the ex-

ecutive vice president in the nature of a recommendation, after which they are reviewed. Then, the group, pending the decision that is made at that level, a group then administers the policy and procedure through several sources, directly with the terminals in some instances, through our regional organizations, and through what we call a manual of instructions. We refer to it as MOI in our company, which outlines the broad general practices to be followed in handling our personnel and labor matters.

Q. Will Mr. Henry and Mr. Hutchinson be available to testify in this proceeding? A. Yes, they will be.

Q. Thank you. Can you tell us the general purpose of the personnel and industrial relations policy, procedures and standards of the company? A. Well, of course, in the labor relations, they are charged with the responsibility of seeing that we are conforming to various labor contracts, which are in existence throughout our operation. They police this type of activity insofar as personnel is concerned. They are involved in making certain that we secure the best qualified people we can locate in terms of local situations, and local needs. In other words, they are working with the terminal managers constantly on the selection and securing of adequate personnel to run our company.

[468] Q. Thank you. I'd like to ask you some questions generally about the motor carrier industry that you have been a part of for many years. Can you tell us something about the industry itself and how it has grown? A. Well, it's been an industry that has had tremendous growth over the years, very rapidly in most instances. Evidence of this might be one statistic that in 1935 there were three and a half million trucks registered in the United States, and in 1970 this has grown to seventeen and three-quarter million trucks in operation. The industry itself and its rapid growth has taken place primarily through the development, of course, of additional traffic, but

when you look at the individual companies that make up the industry, they have been formed basically through mergers or acquisitions.

In 1945 the average truck operation consisted of only eighty-nine employees. In 1970 the average for all carriers in the industry had jumped to four hundred employees. This is an average, and there are many organizations in the business today who number in the thousands. Ours is one of them. We have approximately six thousand employees in our company today.

During this development, of course, this rapid development, there's been quite a change in the nature of the companies themselves. The trucking industry started out with pretty much a one-man-rule type of thing and the pioneers in the business, so to speak, were the men who have the courage to **[469]** start out in a new industry. They ran the show and this occurred for a good many years.

We have gone in the period of time that I mentioned from workers, so to speak, to really job specialist throughout the industry. Of course, the size of our vehicles has changed presently from the small trucks to the large tractor-trailer units you see today, and even doubles in some areas. We have gone from the old hand-cranked adding machines to computers. We've gone from individual negotiated wages, shall we say, to nationwide contracts covering various job classifications and employees. We have gone from small geographical areas of operation for the individual carriers to nationwide group structures. We have gone from limited state and federal regulations to many agency laws and controls throughout the country, and of course, as I say, from the one-man rule, so to speak, to highly sophisticated management techniques today in the industry.

Q. Now, has that pattern that you attribute to the industry as a whole been generally followed in the development of T.I.M.E.-DC? A. T.I.M.E.-DC, as it exists today, is perhaps one of the prime examples in the United States of this type of growth of common carriers in the business. It's made up, I mean, the

company, as it exists today, and was formulated in January of '69, was made up of three organizations, the old T.I.M.E. Freight **[470]** operation, so-called DC International operation, and one that we refer to as LASME, L-A-S-M-E, which stands for Los Angeles Seattle Motor Express Company. These are three organizations that has made up T.I.M.E.-DC.

Now, taking just T.I.M.E. alone, just to show you the type of growth that this has had, in 1929 Mr. Arno Dalby, who is currently still our chairman of the Board of Directors, started this company and it consisted only of one truck running between Post, Texas and Lubbock, Texas. This was the beginning of the T.I.M.E Freight organization.

Q. Mr. Wilkins, let me interrupt you for a moment. Have you caused to be prepared two exhibits, one designated as QQ, that states briefly the history of the development of T.I.M.E. Freight, and also RR, which is a series of maps to show in sequence the mergers and changes in operations of T.I.M.E. Freight? A. Yes, sir. These maps do reflect this, and the historical exhibit reflects the growth of the organization.

Q. All right. Will you make reference to the chart as you go along and I will move from one page to another. A. All right. From the original beginning in Post to Lubbock, as I mentioned, which was in 1929, I think the company at that time, when it was organized, had some four or five employees. This is all that it consisted of. By 1952 it had grown to a hundred and thirty employees, and ran between Lubbock **[471]** and El Paso, Texas basically, as you see the red line on this chart here. This was the growth that occurred in that period.

Now, in November of that year, the next chart, the company acquired Southwestern Freight Lines, which is the red line addition shown on this chart, which extended the company from El Paso into Los Angeles, serving the intermediate points indicated there of Phoenix and Tucson. This company was acquired under a temporary authority by the commission, which

means that the ICC Commission, Interstate Commerce Commission, felt that there was sufficient evidence to indicate that salvation of the Southwestern Freight Lines rested in somebody else taking them over. They had reached the point where they could not successfully operate, so this is what is known as a temporary authority in the industry, and this company, along with many others we will point out, were acquired under this procedure.

This jumped the number of employees to three hundred ninety. General offices, of course, they existed at Phoenix at that time, had to be consolidated into one general office, which was in Lubbock, Texas.

Freight handling procedures were changed considerably due to the fact that the Southwestern Freight Line up to this time was primarily what is known in the business as a truckload carrier, which meant that they handled basically volume shipments, large shipments in excess of ten, twenty thousand pounds per shipment, where T.I.M.E. Freight had built their **[472]** company, and has always been what we call a LTL carrier, which handles the smaller shipments. Of course, we do handle the larger ones, too. There was a basic change in the type of operation involved here.

Talking with many of the people that are still here from that old operation, apparently there was quite a drastic change in their method of handling people. I recall discussing the situation with one individual who said that they in the Southwestern days, there was no—nothing unusual to work all day and then get in the truck and drive all night to where they were going to unload the next day. T.I.M.E. Freight had never operated under this premise, and so there was quite a change in the administration of personnel practices at that time.

In 1953, the company applied for authority from the Interstate Commerce Commission to extend the operation from Lubbock eastward to Oklahoma City. This is the red line that you notice on this particular chart.

The Court: This wasn't a merger?

A. (By the witness) No, just a pure acquisition. No merger. Just extended the authority granted under the public convenience and necessity application by the Interstate Commerce Commission.

The Court: You used the word "acquisition". You're not talking about acquiring another company, just acquiring a new route.

A. (By the witness) Pardon me. I used the wrong phrase.

[473] The Court: I understand.

A. (By the witness) It's an application, and the authority was granted from the Commission on this extension.

Q. (By Mr. Schuler) Mr. Wilkins, I notice on the chart you have designated Oklahoma City authority. Basically, are there any other requests to the ICC for a grant of operating authority that have been involved in the growth of T.I.M.E.-DC, or have most of the changes come about through mergers? A. (By the witness) I believe this is the only one that was secured in this manner.

Q. All right. I want to exclude any type of applications that might involve a plant site of a single shipper or alternate routes. A. Oh, yes.

Q. But in the main creation of the lines of T.I.M.E., this is the primary case where you have sought and got an extension from the ICC. A. This is correct. The rest of them have been mergers or acquisitions of other operations.

Actually, in the beginning of this operation, there obviously was not too much involved, because it was merely an extension of authority that was already operating. A lot of the vehicles and people that were acquired in the purchase of the Southwestern operation were utilized in moving this operation further east into Oklahoma City.

[474] Now, in 1954, which is the next chart here, T.I.M.E. Freight acquired or purchased the Herrington Truck Lines, which extended the operation further from Oklahoma City into Little Rock and Memphis. This was a purchase and was merged into the T.I.M.E. Freight organization, involving the usual difficulties with mergers of this type, relocation of general offices, changes in actual handling of freight itself, retraining people in connection with this activity. In other words, when you add onto an operation, you not only have the job of retraining or training the new people that are brought into the organization, but also a retraining system is needed for the former employees simply because you are handling freight differently now.

Just an example, under this type of organization, up until the addition of this Herrington, all freight moving east of Oklahoma City was what we call interline traffic. In other words, it would be taken to that point and then given to another carrier after which there is no obligation or responsibility as far as the originating carrier is concerned. When you change into this type of operation suddenly this freight now you're handling all the way to Memphis, so that there is quite a difference in the manner in which vehicles are loaded in terms of drivers that are making pickups, what they can tell their customers, yes, we have the service to Memphis, this is the way we handle this type of thing. This is true, of course, in all additions to an operating facility such as this represents.

[475] Q. Did that involve any change in the billing and the accounting for your traffic? A. Many times it does simply because you get into new areas, you have to start accumulating information for various states involved. In my experience, it is my belief, and I think I am correct in this, that every time a company is added to anybody's operation, you always wind up revising your freight bill. You have a new concept that has to be taken care of, and you have to have additional copies. Sometimes I think we are paper manufacturers rather than truck operators, but there is an awfully lot of paper work involved

in the movement of our freight. A change of the accounting system is required every time you add to an operation, as was done in this case.

Q. In the Herrington purchase, did you commence to handle any new types of commodities, such as explosives or anything different from your general line of commodities? A. I am not certain about that particular part of the operation. This does get involved, of course, where you have some companies who have authority to handle dangerous articles, and commodities, or explosives.

I believe in this case, though, now that I recollect, that there was in existence in terms of that particular piece of operation.

Q. Would that require different handling methods and different equipment? **[476]** A. Oh, yes, there was far more safeguards in terms of the proper handling of so-called dangerous articles and explosives than in just the general commodities themselves. There are certain things that drivers must know. They can't mix, certain commodities cannot be mixed on the same vehicle. There's a placarding requirement that over certain weights of certain commodities you have to have a placard on your vehicle to identify what is being carried. There are also restrictions as far as the man himself is concerned as to meeting certain physical requirements that are not required in all cases for general commodity employees.

Q. All right. What was the next merger? A. 1957. Again, under a temporary authority application, permission was granted to T.I.M.E. Freight to take over the operation of Southeastern Truck Lines, which was headquartered in Nashville, Tennessee.

The company was in tremendously bad financial condition, Southeastern was, at the time of this acquisition. The first impact, of course, the first thing that had to be done here was to change that posture of this particular part of the operation. Three small terminals were closed in the Tennessee and Kentucky area almost immedately after T.I.M.E. Freight acquired

this. These were terminals that had employees and trucks and everything that goes with them, but were determined very rapidly to be unprofitable and drains on the organization, and these were **[477]** closed to attempt to improve the earning capability of this particular part of the operation.

The road fleet, in other words, these are the over-the-road vehicles I'm speaking of, at Southeastern were relatively new, however, the former management of the company had purchased what had later developed to be a pretty unsafe unit as far as highway operation was concerned, and these were very shortly after the acquisition taken out of service and replaced by a different type of equipment from the T.I.M.E. Freight organization.

There was, of course, the matter, as has been true of all of these up to this point, a matter of consolidation of operating facilities at the tack point, if you will, tack meaning the point at which the two operations, the old one and the new one, coming together, are joined.

Q. Excuse me. Was that Memphis? A. This was Memphis in this particular case. In other words, here you have a situation where both companies maintained a terminal facility, a complete staff of employees in Memphis, and you have this type of situation of attempting to--not attempting to, you do it, merge the two facilities into one.

Q. I notice that some of the operating rights in the Southeastern purchase are north-south routes where most of the previous routes were east-west. Did this occasion any different type of problems? A. This presented somewhat of a problem only in the fact **[478]** that Southeastern, which is the red-line operation here, was primarily a local, small local carrier, and when I say local, they only handled traffic just within their own operation. Now, with the extent of the authority into, as far west as Los Angeles, it did require a change in the characteristics and approach to sales and operating problems from the South-

eastern into the T.I.M.E. Freight organization. The fact that it went north-south a little bit as opposed to the other did not have a bearing, but it was that change in characteristics of the carrier from a regional licensed-type of traffic to the, what we call, long-haul traffic, which would extend from that area to the West Coast and the intermediate points.

Q. In your sales solicitation, then would your salesmen or would the salesmen in the Southeastern system change their primary selling job, which had been, let's say, between Memphis to St. Louis, to a job of selling freight services from St. Louis to Los Angeles? A. Yes, sir, this is the basic change in it. Of course, all of your personnel are involved in this type of thing, too, but your sales particularly were heretofore interested in securing traffic basically between the points in which they operate, and now they have a whole new outlook as to the traffic that they are attempting to obtain for the company.

Q. What was the next merger? A. I might point out here before we leave this chart that **[479]** our mergers up to this point have been pretty much in what we would call a straight-line operation, where you are adding on to one end or the other of your original operating authority, with just one point of contact.

Now, the next purchase, which was the Powell Brothers in 1959, we got into the duplication of terminals, more than just one. In other words, for the first time here we are spreading out into some other directions, and this purchase, which again was a temporary authority-type of acquisition, had duplicate terminals in three cities, in Oklahoma City, Little Rock and St. Louis. Here became the problem of merging the physical operations and the people, rescheduling of road vehicles, so that for the first time we got into a multiple terminal type of merging.

This Powell Brothers, I believe I mentioned, was of temporary authority again. Some of the problems, also, in particular in connection with this one, was the fact that here they had a

comparatively old fleet of vehicles. In other words, they had, in an attempt to solve some of their financial problems, they had neglected to maintain their vehicles or replace them in accordance with good practice, and it was necessary that T.I.M.E. Freight just practically replace this entire fleet of vehicles, which they did from some of the older T.I.M.E. Freight vehicles, but they were still newer than the ones that Powell Brothers were operating at that time.

[480] Q. Did you run into any new accounting or billing methods or problems with this particular merger? A. Yes, with this one, we did. Of course, the relocation of the general office, which was in Springfield, Missouri, to Lubbock, Texas, again it required a complete revamping of the old Powell Brothers system of accounting, which was pretty much a manual-type operation, as opposed to a machine accounting, and to include the additional territory into the system, a change was made, yes. When I speak of accounting system changes, we are talking, of course, not in terms of changes in ICC requirements as to the accounting, but in the procedures and details of the way you accumulate your accounting information. This is affected by each of these.

Q. Now, in a merger such as this, would your, let's say dock handlers and city drivers in a particular city that had been acquired, have to change their handling methods and require any retraining in order to accomplish that? A. Yes. You always run into that. First, you have a new company moving in, which always has different requirements, or seems to have, in terms of accounting for freight, loading of freight. When I say accounting, I'm talking about the physical checking of it. In this instance, I'm talking about the physical checking of the shipments that are being handled, number of pieces and the size and the weight, this type of thing. T.I.M.E. Freight has had a practice all these years, as **[481]** a new company is added into the operation, the T.I.M.E. Freight systems are introduced. This requires a training ses-

sion in terms of change from what they have been accustomed to. There are many different systems of accounting for the freight, or tabulating, manifesting, dispatching, and in order to have a uniform system, it is necessary that retraining sessions be done with these people. You also run into this type of thing where a carrier such as Powell Brothers, which operated basically into Missouri and Arkansas and one point in Oklahoma there, the state laws governing the weights and sizes of vehicles differ to the extent that these people who had formerly never loaded vehicles that are destined all the way to California suddenly find themselves having to load at a different weight category because of certain revisions.

There are also imports in some of the states, which require a certain type of manifesting on certain commodities that may be on a vehicle moving through the state, so again, as you introduce new people to new situations, there is a tremendous job of acquainting them with all of the facets of the new operation.

After this, in 1961, I don't believe this was on the chart, this was just in between that chart and the other one, there was a small purchase which involved authority only, which was American Transfer and Storage Company, and it was explosive authority. In other words, there was a gap in this Powell **[482]** operation where we could not transport explosives through a certain section, so T.I.M.E. Freight did purchase the operating authority from American Transfer and Storage.

Now, the chart here before us is the acquisition of the Super Service Motor Freight Company of Nashville, Tennessee. This company was domiciled in Nashville, headquartered there. It was a sizable company. It, itself, had, since 1952, been made up of three smaller companies, Norell, which was in northern Alabama, Harrison operation, which extended from New York City to Boston, and St. Louis-Nashville,

which ran from St. Louis to Chicago. So this purchase of Super Service Motor Freight Company took place in 1964. The man who was president and owner of the company was in extremely bad health, had been for several years and the company was in financial difficulty at the time of this acquisition by T.I.M.E. Freight. There were again multiple terminals where we had existing, both companies had existing facilities in St. Louis, in Evansville, and in Nashville, Tennessee, quite sizable operations in Nashville, Tennessee. There were—pardon me.

Q. Excuse me. Did you get into any problems with this merger as to work rules involving some of your various city and dock people? A. St. Louis and Nashville particularly, we had a problem with resolving this, and actually it has not been completely resolved even today in St. Louis, particularly. Each company **[483]** has, in addition, even though there is a uniform labor contract, so to speak, there are differences in work rules. Example: St. Louis, the former employees of Super Service Motor Freight Company had been for a good many years, and were permitted to perform what we call a utility man function, which means that he could check freight, load freight, drive the Towmotor, anything that was involved in the handling of the shipments across the dock in the St. Louis terminal. The T.I.M.E. Freight employees had three different classifications to handle this work chore. In other words, they had a checker, a man who really checked the freight, and then they had a dock man, which handled two-wheeled carts or four-wheeled carts in the movement of freight, and then a forklift operator. In other words, there were three different classifications of employees, so that the merging of these functions, or these two groups into one uniform situation has been a chore. It still has not been accomplished. When I say it still has not been completely resolved, we still have a problem with what a man can do on the dock, so to speak.

We had a somewhat similar problem in Nashville that involved our drivers who operate vehicles just strictly on company premises, which we call hastlers. These men just move vehicles around our terminal facilities for the most part.

In the T.I.M.E. Freight organization, these yard men could move vehicles for shops or they could move for the terminal. In other words, they could move vehicles in and out **[484]** of the dock operation or they could move vehicles in and out of the shop. In the Super Service organization we had separate sets of hastlers. In other words, one man could handle the freight to and from the freight dock, or move the vehicle to and from, but another man had to handle the vehicle if it was going in or out of our maintenance shop, so that here again, when you put two units of these types with given work rules together, you do experience difficulties.

Q. Have those difficulties been resolved? A. In Nashville they have been, yes, sir.

Q. All right. Did you experience any changes with this merger in the types of trailer equipment that you utilized? A. Yes. The Super Service company had vehicles that were purchased and fitted the needs of the operation from Nashville to the East Coast. We had, for example, what we call sliding tandem trailers. Now, this means that a trailer and the back wheels under this, the bogey, were not in a fixed position. They could be moved from one location to another, depending upon the weight the vehicle was carrying. They operated single-axle tractors for the most part, and this ability to slide that back set of wheels did allow you to distribute your weight on your vehicle so that it was in conformance with the various state laws.

Now, in moving into the T.I.M.E. Freight organization, this type of vehicle is not used in the operation into the **[485]** West Coast. We use what we call a West Coast tandem, which means simply that the back wheels of the vehicle are fixed in

the rear-most position, and maintained there and most of your road power is what we call tandem axle tractors, which is a three-axle vehicle. So there is a change here in the terms of the way you can load a vehicle. These are type of equipment that are involved.

Q. Did that require some retraining of drivers? A. Oh, yes. Not only drivers. There is a—definitely a difference in a road driver or a city man will notice the difference even more so, and the movement of the vehicle, movement of the vehicle where your wheels are at the rear of your vehicle. There's quite a difference in maneuvering it around the city. for example, than there is a sliding tandem, so to speak.

Q. Did you run into morale problems with this particular purchase that you had to face? A. Morale was a big factor here and it always is in a company. We are really in the people business. About sixty percent of our expense goes to employee pay checks. People make up a big part of our total activity. Here we have a situation, as existed to some extent in others, we had people that for ten or fifteen or twenty years had been completely devoted and dedicated to an individual, let's say, which is what it was, a man who did own and operate the company, and **[486]** suddenly Uncle Bob, as he was called, was no longer there. People felt that they had lost their right arm. Acceptance of a new organization, new policies, new procedures, was very degrading to some of these people, who had these fears and intense loyalties that they had built up for a good long while to an individual, and the company which he represented.

Q. And in conjunction with that, did you have any requirement to merge seniority lists at that location? A. Oh, yes. This is standard procedure at these joint terminals where you have two groups of individuals being merged. In most cases, most locations, it's not true everywhere, but in most locations, in an acquisition of this type the two groups of

employees are put together in what is referred to as a dove-tail fashion. In other words, it's just as though the company, the individuals had been working for one company all along, and their seniority lists are merged, just strictly as though it had been one organization.

Now, this means that a man that might have been in tenth place from the top on a seniority list in one company suddenly finds himself in twentieth position simply because an employee with the other group had been there longer than he had been with his company, so there is always this difficulty in terms of merging, but it always is done, and then inevitably when you have this type of thing, there are some people on the bottom of the list who are not utilized simply because when you put two **[487]** operations together your needs for people and equipment and everything else is just lessened.

Q. Are there some mergers that involve putting seniority lists together in some fashion other than a dove-tail fashion? A. Well, it depends on the type of acquisition, but I believe in the Central States Area, at least in Chicago, there is a situation where the employees of the acquired company go to the bottom of the list rather than being dove-tailed.

Q. Is that sometimes referred to as an end-to-end combination of the seniority lists? A. I have heard it referred to as that, yes.

Q. Did you have any financial problems in conjunction with that merger that required immediate attention? A. Yes. As I mentioned, the company was in extremely bad financial condition, and the type of traffic which they were handling was really the main source of their difficulty. In other words, when I say type of traffic, it involves many things. It involves where the traffic is destined and the nature of it, traffic freight carriers, different rates, different types. The Super organization had again kind of developed into more of a truckload carrier than they had LTL. This type of thing had to be corrected very rapidly in order to put the company into a profitable position, and then there were many reductions in people really in terms of the Super Service acquisition.

Q. Can you tell us, to bring us up to date at this point, **[488]** about how many terminals and how many employees you had in the system. A. At this point, after the Super purchase, there were fourteen hundred employees in the company, and then we were operating twenty-eight terminals in fifteen different states. That was the size of the organization at this time.

Q. What was your next merger? A. Next we secured a small, a much smaller operation on the West Coast, which was Constructors Transport. This was acquired under a temporary authority. It was relatively small in terms of people or vehicles, or anything of that nature, and it extended the operation simply from Los Angeles to Sacramento and San Francisco, as you see there. There were not too many problems in connection with this other than the consolidation of the terminal at Los Angeles, where we had again the merging of people and this type of thing.

Q. All right. What was next? A. The next one was in 1968 where the company acquired again a small operation, a portion of an operation. This company was divided between another carrier and ours. In other words, they had some authority and we purchased part of it, and the other carrier purchased the other portion of it, but we secured the authority that ran from Oklahoma City down to Dallas and San Antonio. This was the Texas-Arizona Motor Freight Company.

[489] Q. Was that a true merger, or was that primarily just the purchase of the operating authority? A. It was the purchase of the operating authority. The company had deteriorated to the point that they had practically nothing left but a few

road drivers and a few scattered vehicles, and it really was just a purchase of operating authority is what it boiled down to.

Q. And it appears the two primary points you acquired there were the right to serve Dallas and San Antonio, Texas. A. That's right. Fort Worth is included in that Dallas area. Those are the major points.

Q. All right. What was the next merger, please? A. The next one is the one that formed our current company, which was in 1969, January of 1969, which as I mentioned, we put together—well, this is just a portion of it here. This is it showing the LASME operation itself, which is the Los Angeles-Seattle.

The next chart will show the other organization, which is the DC International. These three companies were merged into one in January of 1969. The red lines you see on this particular chart represent the operating authority of the former DC International Company in which itself had been made up of some eight organizations since 1940, acquisitions that fell into—well, one in 1940, 1942, and two in 1942, one in 1945 and one in 1956, one in 1961, one in 1963 and in 1964. There **[490]** was one other operation which was a part of DC at one time, which was disposed of prior to the merger with T.I.M.E. and Los Angeles-Seattle.

This merger gave us quite extensive operating authority, as you can see. It resulted in duplicate terminal facilities in eight major cities, plus the city of Los Angeles, we had three terminals. In other words, we had the problem here of merging. We have today merged one of those into another one, but we are still operating two terminals in the Los Angeles area. We are also operating two terminals in the New York City area.

Q. What are the factors that lead to the maintaining of two terminals? A. The geographical area that you are attempting to serve has a lot to do with this. In other words, when you get

into a city that covers such a vast area and so many customers, as does Los Angeles, or New York City, many times we feel it is advantageous to maintain two separate operations where it can be done. Now, it's a little difficult in a city like Chicago, for example, to do so, because you don't have the distinction between locality as much in Chicago as you do in New York. There are two terminals in New York. We say in New York, they both happen to be in New Jersey. We refer to it as New Jersey, which serves a portion of New Jersey south of Newark, and also covers Brooklyn, Staten Island and Long Island as far as New **[491]** York City is concerned. Then we have another location in North Bergen, New Jersey, who basically services Manhattan and Manchester County and Northern New Jersey. Where we can separate an area geographically in that manner, we prefer to have individual terminals.

Q. Did these mergers result in your operating in all of the major labor conferences throughout the country? A. Yes. For the first time it gave T.I.M.E. Freight operations into all the major conference areas of the International Teamsters organization.

Q. What were the largest problems you faced with adding this much territory? A. Well, the first problem that we faced and that had to be resolved immediately was how do you operate three companies as one company in terms of movement of freight; in other words, under our contractual relationships, a man who is performing a certain function is entitled to follow that work. Now, I'm speaking basically of road drivers at this point. In other words, if a driver has been operating between two points and pulling your traffic between those two points, if you should happen to want to redomicile that man or relocate him or move the traffic to some other method of operation, then the man who has been performing that work is entitled to continue to do so. This was our major problem in terms of this operation, was reaching an agreement that would enable us to

operate the **[492]** system and still maintain certain relationships of this type.

Boston is a good example. The company, prior to the merger, had two terminals in Boston. They had two pickup and delivery operations. Both of them, for example, would pick up freight destined for Los Angeles, California. They had been doing this. And then you had a group of road drivers, two groups of road drivers, one of them based in Chicago, for example, that had been accustomed to pulling all of the freight out of Boston to Los Angeles. This is the way that they had been routed. You had the other group of drivers domiciled in Winchester, Virginia, who also had been accustomed to pulling all of the traffic out of Boston to Los Angeles. Where do you draw the line? In other words, whose work is this tomorrow morning when you only have one terminal? These were resolved to a certain degree. We still feel that we have some inefficiencies in our total operation that are a result of this type of activity, or this type of situation, not activity. We gradually have been able to resolve some of them, but this is the type of difficulty that we were first confronted with in terms of operating.

Now, the Boston example existed in many other locations, Chicago, Seattle, Portland, Los Angeles. Various groups of road drivers, who in the past had been accustomed to handling all of the traffic moving in one direction, and now we had two groups that were theoretically entitled to the same thing, so **[493]** what we worked out was a priority road situation where, and this was done on a nationwide basis with the Teamsters, so that we could operate this company as one company.

Q. Did this merger, in fact, result in changes in all phases of your operation? A. Oh, yes, very drastic changes, and we are still changing as a result of it. In other words, our first concern, of course, was to bring it together in the most efficient manner that we could. Mergers always, particularly when you get into this area, this was a true merger, this was not an acquisition, but there are always, seems to be a tendency in mergers to—well, the first thing you usually do is lose business, you lose employees, you lose business. It's just due to the nature of the situation, where you were previously handling traffic that is no longer available to you, or becomes available in a little different fashion, and you wind up losing some of this freight, which has a tendency to reduce your earning capability, and hold your company down. We have experienced this very definitely since this merger.

Q. Do you have any figures to give some comparison of the earning picture before and after the merger? A. Well, in 1971, for example, which is just the past year, in the third year of our merger is the first year where our total revenue income had exceeded what the joint companies had experienced prior to the merger. In other words, we have been **[494]** going downhill in terms of total business up until last year. This year we did show more revenues than the combination of the three had shown any year before. But in terms of the earning capabilities of the three years just prior to the merger of the companies, if we had combined earnings, they earned about four million dollars per year of net earnings. Since the merger we had one year in which we had a loss, which was 1970, and the average for the three years has only been a million and a half of profit. Now, a million and a half dollars sounds like a lot of money perhaps, but in comparison to our combination and comparison with what we know the system is capable of producing, we are a long way from where we need to be in terms of total business and earnings when actually our earnings for the past three years have been perhaps a little less than a third of what competitive carriers have produced.

Q. Does the lower amount of earnings have any effect upon your ability to maintain a staff of employees and purchase equipment and your general operational capabilities? A. Well, this, of course, yes, has a bearing on it. In other words, what you are doing, you are fighting two things, you're fighting a need for

a profit to satisfy your stockholders, and you are fighting for a need to expand your organization to attract additional revenues. We have not had any expansion of this type since the merger. We have not had the ability really to press out in some areas where some of our competition has **[495]** done so simply because of the situation. Now, it also affects your—your total volume of your business that you are doing, and the profit you're making on this has a bearing on the way you structure your organization in terms of people. In other words, how extensively you are able to pursue some of the more sophisticated management techniques in the situation.

Now, another tremendous thing that has taken place, and we just got this the first of April of this year, and we now feel that we have a control system for the first time that is adequate to meet the needs of our organization, and on April 1st we went into a complete system-wide on-line or real-time computer system to handle all of our preparation of freight bills and controls and dispatching and equipment locations. Up until this time we have not felt that we had an adequate system to really control our company.

Q. Approximately how many terminals do you have now and how much volume of freight do you handle? A. We are operating fifty terminals today in twenty-four states. Our year-end report at the end of 1971 showed five thousand nine hundred thirty-five employees. We are operating sixty-four hundred pieces of automotive equipment. We are handling from ten to twelve thousand shipments per day; this is the size of our operation today.

Q. In addition to your terminal staff, do you have regional officers to supervise the various regions? **[496]** A. Yes. As far as control of this organization and the administration of policies and direction, we have three geographic regions which we refer to as the Western Region, the Northern Region and the Southern Region, located in Los Angeles and Chicago and Memphis.

We have a regional office which is headed up by a regional director, the man that is in charge of all the activity within the geographical area which encompasses, oh, I believe, from eighteen to twelve terminals. I'm not sure of the exact number at each region at the moment. He has to assist him in this work of directing the regional activity a regional sales director. He has a regional traffic manager and he has a regional labor supervisor. In other words, he has a staff composed of three people that work with him in directing our activities in the geographic location from which he is responsible.

Q. And are policies and procedures worked out from the officer level through the regions and the terminals? A. This is basically the way we operate. This is the line organization, so to speak. Our regional director is the man to whom all of our terminal managers report. He, in turn, reports to our executive vice president. Although we work basically through our regional offices, there also are occasions and situations where our officers work directly with the managers, but always within the confines of the regional concept.

Q. With all the various operating problems that you have **[497]** indicated that grow from these mergers, has your company been taking steps to also recognize its obligations in the field of hiring and promoting minority employees? A. We feel that we have very definitely, and our record will so indicate. We, as a company, are very much aware of our obligation, not only in the recruitment, but also the advancement of minority employees. We feel that our record will indicate this. Some of the other witness will perhaps have more to say about this, but we feel that we have demonstrated, despite the many demands on the time and skills of our management during this merger, that we still have indicated our desire and attempt and willingness to rectify or correct our posture that existed perhaps in the past years. We feel that we are showing this very definitely and our record will so indicate.

Mr. Schuler: Thank you, Mr. Wilkins. I have no further questions.

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[514] **Redirect Examination**

By Mr. Schuler

Q. I have just one question on redirect.

You were asked some question by Mr. Fenton about retraining of employees at the time of the mergers. Did this retraining consist of completely giving new skills to people or merely adapting their skills to the new jobs? A. Most of the case, it was adapting their skills or retraining in terms of their past knowledge and relationships. [515] In other words, take a truckdriver for example, he has been accustomed to driving one type of unit, you take that basic driving skill and apply it to a new piece of equipment. It is not a complete change in the skill as such.

Mr. Schuler: Thank you very much. No further questions.

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[519] **GEORGE JAMES HENRY, JR.,**

called as a witness at the instance of the defendant, T.I.M.E.-DC, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Hunter

Q. Mr. Henry, did you previously testify in this proceeding on Thursday, May 4th, 1972, as a witness for the plaintiff? A. Yes, sir, I did.

Q. For the purpose of reviewing your general background——

Mr. Herman: I'm sorry, I can't hear you. Would you speak up?

Q. (By Mr. Hunter) For the purpose of reviewing your [520] background, will you briefly review your employment history with T.I.M.E.-DC? A. (By the witness) My employment with T.I.ME.-DC commenced in July, 1969, at which time I was employed as a labor relations supervisor. In April, 1970 I was designated as the manager of labor relations. In September, 1971 I was promoted to director of labor relations and personnel. That is the position that I now hold.

Q. I see. Have all of these positions accordingly dealt with the administration of labor agreements with T.I.M.E.-DC? A. Yes, sir, they have.

Q. How many years have you been employed in the trucking industry? A. Twenty-nine years, sir, with the exception of one time out for military service.

Q. All right. I see. Who was your immediate employer prior to T.I.M.E.-DC? A. I was employed by a common motor carrier known as United Buckingham Freight Lines, Inc.

Q. During the course of your employment with United Buckingham, did you hold any positions with respect to labor relations functions? A. Particularly that period of employment from 1963 to 1969, '69 being the time that I left their employ.

Q. What did those positions include? [521] A. In 1963 I was located in Omaha, Nebraska, and at that time I was identified as the manager of the eastern operations, eastern operations in that company encompassing Denver and Casper, Wyoming on the extreme west, Detroit, Michigan on the extreme east, St. Louis and Kansas City on the south, Minneapolis and Sioux Falls on the north and within those boundaries we had several points of certification.

Q. I see. What other positions did you hold with that company? A. Subsequently I was promoted to vice president, eastern

operations, the boundaries remaining the same. And then in 1967 I became vice president of industrial relations for that company.

Q. What geographical area did that duty encompass? A. Coincidently, in 1967 Buckingham Freight Lines, through application to the Interstate Commerce Commission, acquired permission to operate initially in a temporary authority, and subsequently on a permanent authority, the Norwauk (phonetic) Truck Lines, Inc., so this then extended United Buckingham authority eastward to the East Coast. This essentially was the addition. The operation now through the acquisition covered some thirty states.

Q. What was the nature of your duties as vice president of industrial relations? A. I was responsible for the safety, labor and personnel **[522]** functions of the company.

Q. Does that include the policing and the administration of labor agreements with the various local unions? A. Yes, sir.

Q. I see. Mr. Henry, I submit you now an exhibit which was previously identified as JJJ, Defendant's Exhibit JJJ. Could you briefly indicate what that exhibit represents? A. This is indicative of the persons responsible for labor and personnel matters for the period of 1965 through 1970, setting out, attempting to set out the persons, responsible of the three premerged companies, namely, T.I.M.E. Freight, DC International and LASME.

I would like to apologize for one thing. In the area on the first page under the heading of DC International, there is an inadvertent error indicating that Mr. Catsinas' employment was terminated in 1966. We apologize for that. It was 1967.

Q. Let the record indicate then that correction.

Mr. Henry, at the time of your prior testimony you identified an organization called Trucking Employers, Inc., is that correct? A. Yes, sir.

Q. Is that organization commonly referred to as TEI? A. Yes, sir.

Q. Is T.I.M.E.-DC affiliated with that organization? **[523]** A. Yes, sir, it is.

Q. Were its three immediate predecessors, which have been identified as DC International, LASME and T.I.M.E. Freight, also affiliated with that organization? A. Yes, sir.

Q. When was it formed? A. Trucking Employers, Inc. was formed in late 1963.

Q. I see. What is the nature of that organization? A. Well, initially, it is a non-profit organization in principle. It is a multi-employer association of some seventeen hundred trucking companies through authorization from these trucking companies' respective state or area organizations, as they are sometimes called, through authorization represent and negotiate and execute in behalf of the carriers a labor agreement with the Teamsters union. The labor agreement is known as the National Master Freight Agreement, and it includes its various supplements. I see. Do you have personal knowledge as a result of your labor relations activities for the factual reasons for its formation?

Are you referring to TEI?

Q. Yes. A. Well, yes, sir. The occasion for its formation was for the first time an attempt to negotiate an industry-wide labor agreement with the Teamsters union for the trucking industry.

[524] Q. In what manner were negotiations conducted in the trucking industry prior to the formation of TEI? A. Well, for a period of about fifteen years prior to the formation of TEI, there were agreements known as area agreements. These were areas, being geographical. There were carriers, for that matter, unions operating in a given geography whose problems or negotiating reasons were common, and this was the occasion for

the area agreements. And this existed, as I say, for some fifteen years prior to the construction of TEI.

Q. Do you have personal knowledge for the reason then, therefore, for the formation of TEI in the context? A. Well, yes. Principally, what happened is that our industry had known phenomenal growth, particularly in the post-war years. Prior to that time, by the certificates held and by the relatively smallness of the companies, they were confined to, as I stated, geographical areas. Because of the growth through mergers, acquisitions, through grants of authority by the Interstate Commerce Commission, a significant number of carriers had expanded their operations, finding themselves operating in more than one area, conceivably several areas, and so, therefore, there was the occasion then for standardizing, if you will, and giving credance then to an industry-wide negotiation.

Q. I see. Could you describe the organizational structure of TEI? **[525]** A. Yes, sir. TEI is made up essentially—it starts off basically with two committees, one known as the executive policy committee, and the other one known as the labor advisory committee.

Now, these committees are arrived at on a per capita basis, if you will. For each four thousand bargaining unit employees, one member from each of the associations, of which there are two, incidentally, is appointed to the executive policy committee, and using the same formula, one member is appointed to the labor advisory committee. The basic distinction between the two committees is that whenever possible the executive policy committee is made up of the principal officers of motor carriers, and it is the voting unit. The labor advisory committee, as the name implies, it advises, it does not hold a vote, is made up of gentlemen that are principally involved in the day-to-day labor relations matters of motor carriers.

Q. I see. A. From that a board of directors—from the executive policy committee, if you will, a board of directors is established. The members come from the executive policy committee. They are voted on by the executive policy committee. There is about three basic breakdowns, as far as the board of directors is concerned, so that all of the areas, and we in our industry from the employers' side, we use the same conference **[526]** designations as does the Teamsters, referring again to the Western, Southern, Eastern and Central, so that each of these conference areas will be represented. Again, a per capita formula is used. For each twenty thousand bargaining unit persons, there shall be one board of directors from that respective conference. This represents nineteen, this accounts for nineteen of the board of directors. Four of the board of directors are the officers of TEI such officers being a president, a chairman, a vice chairman and a secretary-treasurer. This leaves five not accounted for. Those five—Excuse me. It accounts for four of them. Four gentlemen are known as the negotiating committee, again so that representation is equal. There is one negotiating member for each of the four conference areas. The fifth person is known as the negotiating chairman.

This, I believe, accounts for the twenty-eight that I set out.

Q. What is the nature of the negotiating committee as selected by the TEI executive policy? A. Well, as I indicated, these gentlemen are representative of the four conferences. They form the basic negotiating team, if you will, to negotiate with the Teamsters.

Now, logically, because there are so many supplements involved and so many locals identified with the respective supplements, the bylaws provide the appointment of subcommittees so that in these particular areas of negotiation it can move **[527]** along.

I might digress. The negotiating committeemen are by reputation informed, good negotiators. However, they are not empowered to, in fact, conclude an agreement with the Teamsters, but rather are required to bring back their recommendation,

their findings, or what have you. They are required to bring those back to the executive policy committee, and before the matter becomes official it must carry the majority vote of the executive policy committee.

Q. I see. Well, now, having described the organizational structure of TEI, could you define more closely T.I.M.E.-DC's affiliation with TEI. A. Well, we extend our power of attorney to TEI through our local association.

Q. What is that? A. That is the Southwestern Operators Association. It's located in Dallas, Texas.

Q. How is that designated, your T.I.M.E.-DC's association? A. Well, Southwestern Operators itself is a TEI affiliated organization, and we extend to them our power of attorney in these matters, and incidentally, as we extend it to them in the matter of these—the National Agreement, we also indicate the supplements that we are particularly involved in.

Q. I see. Now, although you submit your authorization to represent through the Southwest Operators Association, is **[528]** T.I.M.E.-DC also a member or affiliated with the other area organizations? A. Well, yes, sir. Because of the expansion of our company, we are members of twenty other such associations. The total number is twenty-eight, and we happen to be members of twenty of those twenty-eight.

Q. I see. Now, did the same form of affiliation hold true for DC International, T.I.M.E. Freight and LASME? A. Yes, sir.

Q. Could you describe the method by which TEI negotiates the various agreements on your behalf? A. Well, first of all, they obtain our authorization through our association, and as the negotiations—perhaps I'm sounding repetitive—as the negotiations commence, why, it is through this negotiating committee, and out of necessity through the appointment of subcommittees.

Q. Who do they negotiate with? A. Well, they negotiate with the Teamsters union, who in itself appoints a committee. I believe that it is known, their committee is known as the National Over-The-Road and City Cartage Policy Negotiating Committee. I believe that is its designation.

Q. And then, as the negotiations are commenced, what occurs? A. Well, the intent, of course, is to conclude the National Master portion of the agreement. However, before the **[529]** supplements are concluded, there are frequently some contingencies with those supplemental agreements who are subsequently resolved, again through one of our employer associations. So the process is not immediate. It involves getting down to the local level into the supplements, again through our local associations that we have given our power of attorney to.

Q. Are the results of TEI negotiations submitted to the executive policy committee; is that correct? A. Yes, sir.

Q. Upon acceptance by the TEI Executive Policy Committee, does T.I.M.E.-DC at that time become signatory to the various agreements? A. No, sir, it doesn't.

Q. What must occur prior to the actual signing of the agreement? A. Well as I indicated previously, there is still some contingencies at the local level, based on historic practices and what have you, that the unions on one hand attempt to guard jealously, and on the other hand, out of necessity, the employer attempts to negotiate out, and this is done through—again through these local associations in our behalf.

Q. Could you identify some of these local matters? A. Well, in the Central States Over-The-Road Agreement, for example, you have the Ohio Ryder.

[530] Q. What geographical area does that cover? A. Well, as the name applies, it covers Ohio. Ohio happens to be one of the states found within the Central States area.

Q. Who negotiates that on your behalf? A. Our Ohio association.

The Court: Who do they negotiate with?

A. (By the witness) With the unions involved, sir.

The Court: Local unions or international?

A. (By the witness) No, the local unions.

Q. (By Mr. Hunter) Okay. With whom does T.I.M.E.-DC in effect then sign its various agreements with? A. (By the witness) Well, ultimately with the local unions.

Q. This is at the conclusion of all of the various local negotiations. A. Yes, sir.

Q. I see. Is T.I.M.E.-DC in fact signatory to any agreement with the International Brotherhood of Teamsters? A. No, sir.

Q. I see. How many labor agreements is T.I.M.E.-DC presently signatory to? A. Oh, we are signatory to a total of a hundred and forty labor agreements. Now, of that hundred and forty there is a hundred and twenty-four of those that are with Teamster affiliated unions. Within that framework of a hundred and **[531]** twenty-four, there are a hundred and twelve of those that are supplemental to the National Master Agreement, meaning that there are twelve that aren't.

Q. How are those agreements negotiated? A. Well, those are negotiated sometimes between ourself and the local union, but generally on our behalf through a local association.

Q. I see. Now, Mr. Henry——

The Court: Are you going into another area, now?

Mr. Hunter: Yes, sir.

The Court: Let's take the lunch break at this time, then.

I'm trying to think, Mr. Wells, about your witnesses. I looked at this list of witnesses from T.I.M.E. Do you really think

we ought to have Mr. Wells have his witnesses before Friday morning in view of the fact that I indicated that about 2:45 I've got this time tied down tomorrow afternoon, and I will need to leave. I could come back at 4:00 and if it will expedite things, I will.

Mr. Wells: If Your Honor please, I have one coming in on the basis of a long-distance call last night that I might want to put on out of order.

Mr. Hunter: Your Honor, also that list which I believe you are referring to in the pre-trial order **[532]** would not represent the total number of witnesses. We are calling all of those purely for rebuttal. There are not as many as I listed on that document.

The Court: Well, I indicated to you all yesterday, I will still stay if you will give me from 2:30 until four or 4:15 tomorrow afternoon, then I will come back then and we can hear your witnesses out of order. There's no problem.

Mr. Schuler: No, no problem.

(Afternoon Session)

The Court: Mr. Hunter, if you will continue your examination.

Mr. Hunter: Thank you, Your Honor.

Direct Examination (Resumed)

By Mr. Hunter

Q. Mr. Henry, near the conclusion of your testimony, you advised us as to the number of contracts that T.I.M.E.-DC has with labor organizations. I believe your testimony indicated that those with which you had contracts were the Teamster local unions. A. Yes, sir.

Q. Does T.I.M.E.-DC have other labor agreements? **[533]** A. Yes, sir, we do.

Q. Would you describe briefly the nature of those agreements? A. We have eleven IAM agreements; that is, International Association of Machinists and Aerospace Workers. Six of those eleven, incidentally, are found in an area agreement. We have one agreement with Building Service Employees in Chicago and one agreement with the Office and Professional Workers in Denver, Colorado, and one agreement with the Inter-Terminal Workers in New Jersey.

Q. Mr. Henry, previously identified as Defendants' Exhibit SS, is a document entitled The Variances Between Various Labor Agreements to which T.I.M.E.-DC is Signatory. Are you familiar with that document? A. Yes.

Q. In what manner are you familiar with that document? A. Familiar to the extent that it was prepared under my direction.

Q. What does that document purport to represent? A. It represents the variances between the various labor agreements, calling attention for one, the retirement differences between Central States, Western States and Southern Conference, the road seniority provisions of those agreement.

The Court: What is the number of that exhibit, please?

[534] A. (By the witness) Sir, it is SS.

The Court: I don't have that up here, do I?

A. (By the witness) Double S.

The Court: Have you got a copy of that I can use to examine?

Mr. Schuler: Yes.

The Court: I'd like to follow it if we are going to start talking about it. It will be easier for me to understand it. All right. Thank you. That will be helpful.

All right. Go ahead.

A. (By the witness) In the area of road seniority, it points out differences, probably highlighted would be the noting that the Southern Conference has the modified seniority provisions.

Q. (By Mr. Hunter) That modified seniority provision is exclusively found in the Southern Conference area supplement? A. (By the witness) Yes, sir.

Q. Is that found in any other supplemental agreement to which T.I.M.E.-DC is signatory? A. No, sir.

Q. I see. A. No, sir, does not. It points out another thing that—it points out several things, but a thing of significance, I think, is a substantial variance, I think, in the seniority **[535]** provisions, particularly as it applies to the probationary period. In other words, it sets out the differences in time and circumstances under which a gentleman eventually acquires seniority status, and that would be the highlights of it.

Oh, it sets out, too, again in the area of seniority, a comparison between National Master Freight Agreement, which would be applicable to all contract supplements. It compares that on one hand and compares the difference on the other hand with the Local 705 Chicago Agreement, that difference being the basic difference between 705 and the National Master, which is particularly in the area of a buy-out as one carrier would buy another. Those employees of the purchased company, come over at the bottom. They do not come over on a dovetail basis.

Q. I see. Does this exhibit purport to represent all of the variations that exist in the various area supplements? A. No, sir, it doesn't.

Q. Can you identify any variations which would not be set forth in that document? A. Well, one significant item that was inadvertently left out was the occasion that variances exist with Joint Council 7.

Q. Where is Joint Council 7? A. That is in the bay area, the San Francisco Bay area, the union that we have a contract

with there. That is part of Joint Council 7, covering our employees at Hayward. Unlike all the other contracts, it has an exclusive hiring hall provision **[536]** which has the effect of requiring the employer getting all of its employees from the union hiring hall.

Q. I see. This is a condition not found in any of the other supplements, is that correct? A. That's correct.

Q. Well, in particular regard to seniority provisions, where does T.I.M.E.-DC find the various seniority provisions applicable to its various terminal locations? A. Well, initially there is a seniority provision in the National Master Agreement, then as you get into the supplemental agreements therein, you will find seniority provisions in the contracts.

Q. Are there local practices also with regard to seniority? A. Yes, sir, there are.

Q. Are they in any manner unique to the particular location where T.I.M.E.-DC has a facility? A. Yes.

Q. In what manner of the seniority provisions that have been developed that apply to the T.I.M.E.-DC locations? A. Well, the seniority provisions in the contract evolve basically from two sets of circumstances. One, the negotiations of the agreement itself, and those things generally evolve in the course of the contract from a grievance, items that are grieved through the grievance machinery provided for in the contract. I'm trying to determine in my own mind what comes **[537]** first as you are in a period of a contract. Maybe I could best say it this way: As you are in a period of a contract, certain items become matters of interpretation, matters of controversy, and are submitted to grievance machinery. They are ruled upon, and may subsequently appear in a down-the-road negotiation of a contract so that they won't have the continuing problem with it.

Q. Again, you earlier illustrated the manner in which contracts are negotiated on behalf of T.I.M.E.-DC. Does this form

of negotiation, that is, multi-employer, multi-union basis, also explain the manner in which seniority provisions are developed? A. Oh, yes.

Q. For example, therefore, in Los Angeles, are the seniority provisions which generally apply to T.I.M.E.-DC's Los Angeles facilities also applicable to other carriers in that same city? A. Oh, most certainly.

Q. Is that the case generally in the context of the various other locations? A. Yes, sir.

Q. In what manner could T.I.M.E.-DC, therefore, modify existing seniority provisions? A. Well, the only way, in my opinion, to my knowledge that T.I.M.E.-DC could modify those provisions conceivably would be **[538]** to withdraw from the contract and, of course, there is a legal question there, you couldn't withdraw during the term of the contract, but as the contract expired and you subsequently got into new negotiations, is to not be a part of a multi-employer negotiation, and elect to negotiate singularly, by yourself, with the respective local unions.

Q. I see. This, therefore, would require T.I.M.E.-DC to leave the various multi-employer associations with which it is associated. A. Yes, sir.

Q. And assume the responsibility of negotiating its own contracts with the various local unions, is that correct? A. That's right. However, if I may, that could be a disastrous situation for many reasons, the basic reason being time alone. I have indicated that we have contracts with a hundred and sixteen IBT locals, a hundred and twelve of which are supplemental to the National Master. Time alone would preclude you from doing this. I seriously doubt that any local union, while they may consider negotiating with you singularly, would change their position on seniority matters. You would lose the strength of collective multi-employer bargaining. You would not know

what your costs of doing business would be, something that an industry-wide negotiations permits you.

Q. I see.

Mr. Hunter: I believe that's all the **[539]** questions I have.

The Court: Let's see, can we go to the government?

Cross-Examination

By Mr. Fenton

Q. Mr. Henry, I believe you testified that Trucking Employers, Inc. was originally founded in late 1963, is that correct? A. Yes, sir, that is what I said.

Q. When was the first National Freight Agreement entered into? A. Well, it was negotiated and resolved in 1964, early 1964. I believe it was February.

Q. You also described the negotiation process which occurs between Trucking Employers, Inc. and the Teamsters. A. Yes, sir.

Q. And you mentioned that a board of directors forms a basic negotiating committee which they negotiate with the Teamsters, and then there are also subcommittees composed of, I suppose, various segments of this basic negotiating committee, is that correct? A. That isn't exactly what I said, Mr. Fenton.

Q. Could you reiterate how the subcommittees are set up? A. I did not say that the board of directors formed the **[540]** negotiating committee. I said a negotiating committee was formed from the executive policy committee. Those committee members could, incidentally, be members of the board of directors.

Q. I see. And you stated, did you not, that there are also subcommittees. A. Yes, sir.

Q. Now, do these subcommittees negotiate the various conference supplemental agreements? A. Yes, sir.

Q. And that would be the Southern Conference Supplemental Agreement, Western Conference, Central Supplement and Eastern Supplemental. A. Yes, sir. There are many more.

Q. Yes. Carolina, I think, is another. A. New York, New Jersey, New England.

Q. Right. A. I think there are thirty-six to be exact.

Q. Do these negotiating sessions generally occur at the same place or same area? A. Yes, sir.

Q. At the same time, in fact? A. Yes, sir.

Q. Are there also union subcommittees which participate in the negotiations of these supplements? **[541]** A. Presumably, yes.

Q. Do you know? A. Well, yes, there are—I have personal knowledge that there are opposing union subcommittees.

Q. Do you know who appoints the subcommittees for the unions? A. No, sir, I don't.

Q. Now, you testified with respect to Defendant's Exhibit SS. Would you agree that there are competitive rights which are provided for in these agreements, which are separate from benefit rights; in other words, a competitive right would be the seniority which is given to an employee, whereas a benefit right would be something like a vacation length, or retirement? Do you understand what I'm driving at? A. No, sir.

Q. Will you agree that a man's seniority position gives him competitive status? A. Oh, yes, sir.

Q. Does the length of a man's vacation, does that in any way put him in competition with any other employee? A. I don't understand the question, Mr. Fenton.

Q. Well, you testified, I believe, with respect to Defendants' Exhibit SS, that there are vacation provisions set out in these various agreements. A. Yes, sir.

[542] Q. And some of the agreements have different provisions for vacations. A. Right.

Q. Now, when a man is given a particular vacation, is he competing with any other employee at the company? A. No. Well, in the context of competing, as a matter of local practice, if this is in the context of competing, in the matter of local practice, the contracts generally set out that the employer will let a certain amount of its employees go on vacation between May and October, and it calls, generally calls that the people, the workers, consistent with their seniority, bid, indicating a preference as to the time they want to go, and seniority in that circumstance is the governing factor.

Does that answer your question?

Q. That is——

The Court: Well, it's not competitive as to who will get a run on a certain day necessarily.

A. (By the witness) Well——

The Court: They are bidding for the jobs. The length of the vacation, would that have an effect on it?

A. (By the witness) No, the length of the vacation is provided for in the contract.

Q. (By Mr. Fenton) And the length of the vacation is not a competitive thing. A. (By the witness) No, sir.

[543] Q. What about when a man retires, is this a competitive thing, whether he retires at age sixty-two or age sixty-five? A. No. It's provided for.

Q. It is provided for, but it is a competitive thing. A. Well, it can become competitive.

Q. How would that be? A. There is a requirement under a certain set of circumstances, depending on the supplements involved, that a man, if he has sixty-five years, for example, if he has sixty-five years and he does have the sufficient credits to retire, credits into the appropriate trust fund, that he must retire. If he does not retire, it creates—it is holding somebody way down at the bottom of the list from work. I mean, it can create a competitive situation that way.

Q. Agreed, but if the contract provides that everyone must retire when they reach age sixty-five, then there is no competition among employees. A. No, I'd say not.

Q. On that aspect, is there? A. No, I'd say not.

Q. Now, you further testified with respect to possible means by which T.I.M.E.-DC could modify seniority provisions. I believe you testified that perhaps the only way this could be done would be to withdraw from present contracts and present associations. Was that the thrust of your testimony on that? **[544]** A. That's what I said.

Q. Now, that would leave you to deal with the local unions, correct? A. Yes, sir.

Q. Now, in your opinion, based on your experience, would you be able to negotiate these seniority modifications with a local union?

Let me give you an example. Let's assume that you wanted to permit city drivers in Dallas, Texas to be able to transfer to road driver vacancies, which might come up there, and take all or part of their accumulated terminal seniority with them. Do you think you could negotiate this with a local union?

Mr. Wells: Object to this as speculative.

The Court: Well, I'm going to overrule. I am interested in what he has to say about this.

A. (By the witness) Well, I'd say this, Mr. Fenton: We, the company, could submit it in the form of a proposal for their consideration. However, if that proposal was in conflict with a practice that they had through contract with all the other carriers in a like situation, I would not hold much personal hope that they would entertain it.

Q. (By Mr. Fenton) Is that proposal presently, or let me rephrase that. Is that proposal in conflict with the present practice of that local? **[545]** A. Well, what local?

Q. I believe it would be Local 745 in Dallas, would it not? A. Is your question is there a provision that permits the exchange from dock to road and so forth?

Q. Well, my original question was assuming you wanted to negotiate this kind of change, could you do it with a local union there, and then you answered that and you stated if it were in conflict with the present practice of that local union, that you wouldn't hold much hope for it.

Now, my question now to you is would that be in conflict with the present practices which prevail there? A. Of permitting a city man to go to the road or vice versa?

Q. Is there such a practice there now? A. No, sir, not to my knowledge.

The Court: I am not so sure that I—what your question is, and what the answer is. Your question was is there such a practice. You mean a practice prohibiting it, or a practice of allowing it? I want to get this answer.

Mr. Fenton: A practice of allowing it.

The Court: Allowing the free transfer between the two?

Mr. Fenton: With seniority carry-over.

The Court: Do they allow it or do they not allow it?

A. (By the witness) They do not allow it. The contract **[546]** does not provide for it.

The Court: Does the contract prohibit it?

A. (By the witness) They are separate agreements, Your Honor.

The Court: In Dallas, now.

A. (By the witness) Yes, sir.

The Court: It does prohibit it in Dallas.

A. (By the witness) By virtue of there being separate agreements. In other words, we have a road agreement and we have a city agreement.

Mr. Wells: If Your Honor please, I am sorry, I am somewhat confused. Is the witness saying that transfer is prohibited, or that seniority carry-over is prohibited? I think he was asked both questions.

A. (By the witness) Well, I was answering the condition of seniority carry-over.

The Court: Thank you. That clears it up. I wasn't sure before. That clears it up. Thank you.

Mr. Fenton: Could I have a moment, Your Honor?

The Court: Yes, sir.

Mr. Wells: If Your Honor please, in connection with that, I would call Your Honor's attention to a stipulation on Page 13 of the pre-trial order, Paragraph 15.

The Court: I don't think that Counsel **[547]** intended to get into that specific factual situation, but was using it as an example to clarify the witness' answer to a prior question.

Mr. Fenton: I think that's all the questions I have, Mr. Henry.

Cross-Examination

By Mr. Wells

Q. Mr. Henry, I'm not sure whether you were in the courtroom when this was discussed this morning about change of operations committee. Are you familiar with how those work? A. Yes, sir.

Q. Assuming a change of operation by T.I.M.E.-DC wholly within the Southern Conference, say, from Oklahoma City to Dallas, if you intended to redomicile people or to change some method of operation that would have effect upon employees, would you prepare that in writing and submit it to the unions that would be involved? A. Yes, sir, by certified mail, incidentally.

The Court: Now, what do you mean union, local or international?

Q. (By Mr. Wells) This would be the Dallas Local 745 and the 886 in Oklahoma City, is that correct? A. (By the witness) Yes, sir.

Q. And if any other local union was going to be affected **[548]** by that change, you, likewise, would notify it. A. Yes, sir.

Q. Now, after you had done that, just tell the Court what would happen. A. Well, it then becomes a case before the change committee at the meeting of the Southern Conference proceedings.

Q. Now, does the Southern Conference have regular meetings of grievance committees on a monthly or other regular basis in the conference? A. Yes, sir.

Q. At the moment do they meet in Biloxi, Mississippi on a monthly basis? A. Yes, sir, they do.

Q. And will they have, say, three to five or six hundred grievances from the local industry that may be disposed of before

panels sitting for a week or ten days or however long it takes to dispose of those grievances? A. Yes, sir. And those panels, incidentally, are made up equally of employer and union members.

Q. All of which is set out in the contract, which is in evidence here, right? A. Yes, sir.

Q. Now, at the same time that the equal numbers of employer and union people are meeting to settle pending grievances, is there put on the agenda the matter of changes of operations which **[549]** may be pending at that time? A. Yes, sir, generally.

Q. In that case it's convenient both to the industry representatives and the local union representatives who happen to be at one spot in the south to handle the grievances, to take up at that same time the change of operation that may be pending? A. That has always been my opinion, yes, sir.

Q. All right, sir. Now, assume then you have this change between Dallas and Oklahoma City, and you have notified the affected local unions, and you are all down in Biloxi, Mississippi. Now, what happens? A. Well, it comes before the change of operations committee.

Q. That is made up of equal numbers of employers and union designees, is that correct? A. Yes, sir.

Q. How are the employer representatives designated? A. Well, they are designated generally through their local association.

Q. That would be through the Southwest Operators Association. A. Yes, sir.

Q. And do you happen to know how the union people are designated there? A. No, I don't happen to know.

[550] Q. But in any event, there are equal numbers that meet there.

Now, once that change of operations committee is set up, then what happens? A. Well, the issue—the company presents its case, the unions, if they find aspects of it objectionable, objectionable within the bounds of the contract, the labor agreement, they voice those objections and the company conversely has an opportunity to rebut, or what have you, and then finally, in Executive Session, in other words, in the absence of the participating locals and in the absence of the employer, the case —the request is decided on its merits.

Q. By that change of operations committee which is made up half union and half employer. A. Yes, sir.

Q. Now, once they have decided it, what do they do? Do they write somebody a letter or do they put it on—make a notation on the agenda, or what do they do? A. Well, it becomes a matter of record in the Southern Conference. For example, all of the proceedings are transcribed, so they are a matter of permanent record, and a decision is rendered, all of the members of the respective committees, that is, the employers' side and the unions' side, sign that, such as a decision, and the parties are called back in the room and they are advised.

[551] Q. But now the people that sign it are the committee that decided it in kind of a quasi judicial function rather than the participating parties who were litigating about it, right? A. Oh, absolutely. I had hoped that I made that clear.

Q. There is no agreement, collective bargaining agreement, or other type of agreement signed between the Oklahoma City and the Dallas locals on the one hand and T.I.M.E.-DC on the other hand. No, sir.

Q. It is somewhat similar to coming before His Honor here in court and then the tribunal declares the proper disposition under the terms of the contract, is that correct? A. It is a parallel.

Q. Yes. And then that disposition by reason of the terms of the contract becomes final and binding on the local unions involved and on the employer involved. A. Yes, sir.

Q. In effect, the change of operations committee is a tribunal that is set up under the contract to determine disputes that may arise between employers and local unions about changes of operations, is that right? A. And other contractural matters.

Q. Now, in that connection, Mr. Wilkins testified this morning about the trends and the thrust in this industry from a number of small operations to a lesser number of large **[552]** operations. Were you here at that time? A. That part of it, yes, sir.

Q. Is it also true that there is a trend in this industry that equipment and roads and various other economic factors improve and require changes in the way you handle freight over the period of a contract? A. Well, yes, yes, that's right.

Q. And is that one of the reasons for this change of operations tribunal, in order so you won't be frozen into a particular mold as of the date of the beginning of a three-year contract, but you can make necessary changes in the way you operate during that contract, but consistent with it. A. Yes, sir.

Q. Just tell the Court what kind of changes there might come in terms of changes of operations. A. Well, Your Honor, one of the most recent changes that I was personally involved in, which we put into effect on January 17th of this year, was east of Chicago going from Chicago to Toledo, Cleveland, Buffalo, Syracuse, Albany, Boston and on into North Bergen. We had what was known as a sleeper operation. That is two men in a vehicle, one driving, one resting. Prior to January 17th—before, in fact, this was a multi-change, because it now—what we were proposing now involved the Central States where the Chicago drivers were based and we were proposing in our change to do away with the **[553]** sleeper cab-type operation, and in its

stead over that same network establish a series of single man relays.

Now, the way it became a multi-conference change is that we proposed, consistent with the contract, namely letting the men follow their work, we proposed to leave X number of men in Chicago, send X number to Cleveland where we were going to establish a road domicile—prior to that time we had none—send some to Detroit, Michigan, some to Buffalo and some to Albany. The minute you hit Buffalo you are now in the Eastern Conference. This makes it a multi-conference change. So, anyway, consistent with the provisions of the agreement, namely because it was a multi-conference change, we addressed ourselves to the union chairman, who is the union chairman at National Master, Frank Fitzsimmons, and employer chairman, Ray Beagle, and you address yourself to them, outlining, if you will, what you're proposing, in fact, you indicate your present operation, you indicate your proposed operation. That office assigns it to a particular conference for hearing, notifies all of the principals, and thus you have a hearing, and in this particular case this change was granted as proposed by the company.

Q. If I may intrude on the multi-conference situation, which you have just described, is the tribunal which decides whether or not it will go into effect similarly half union-half employer? A. Oh, yes.

Q. And are the employer representatives selected in the **[554]** same way as they are on the—— A. Well, the thing that makes it slightly different, Mr. Wells, is that they always observe that both conferences, in this case the Central States, be represented, and that the Eastern Conference be represented. So while you have equal numbers, within the equal numbers there are equal numbers of conference representatives.

Q. And would that be true on the union side, too? Does the Central Conference designate certain members and the Eastern Conference of the Teamsters designate other members, or do

you know? A. No. I know that from personal experience both conferences on the union side are represented.

The Court: Is that half and half or would that be—You gave a figure per four thousand.

A. (By the witness) Well, no, sir. That four thousand only related to the TEI makeup and these matters——

The Court: This is just half and half?

A. (By the witness) Yes, sir.

The Court: In the example you've been talking about?

A. (By the witness) Yes, sir.

Q. (By Mr. Wells) Mr. Henry, with the Court's remarks there, I think there may be some confusion in this record between the negotiation of collective bargaining contracts on **[555]** the one hand and the administration under collective bargaining contracts on the other.

Now, I am addressing myself at this point only to the negotiations. Is it true that these are normally negotiated on a three-year basis? A. (By the witness) Yes, sir.

Q. For example, there were area contracts in '61 to '64. Then again in '64 to '67 and so forth. A. As I recall, Mr. Wells, the less than three year was pretty well done away with back in the early or back in the mid-fifties.

Q. All right, sir. I believe you have testified that beginning in '64 there was the National Master, and the applicable supplements, depending on geography, or on industry. A. Yes, sir.

Q. Now, would it be a fair concept to view the National Master as something of an umbrella contract that covers certain matters that will be applicable to local unions and to employers nationwide? A. Yes, sir, that would be correct.

Q. I believe you said some seventeen hundred employers in what, five or six hundred locals, or something like that? A. I don't know how many locals there are, but there are substantial.

Q. All right. Now, in the negotiations of that umbrella **[556]** National Contract, I believe you said that such employer gives a power of attorney to his local employer association. A. Yes, sir.

Q. Which in turn gives the power of attorney to TEI. A. Yes, sir.

Q. And TEI then selects the negotiating committee, as you have indicated, for the employer's side of the negotiations.

Now, similarly, does each local union execute a power of attorney either to its area conference or to the National Over-The-Road and Cartage Negotiating Committee? A. It is my understanding that they do, Mr. Wells.

Q. And do the individual employers make available the power of attorney to the unions and do the unions make—the local unions make their powers of attorney available to TEI so everybody will know who is being represented? A. Well, that is the first step of the negotiations, is the exchange, or the acknowledgements, if you will, to the respective parties holding the powers of attorney.

Q. And once those powers of attorney are executed and negotiations take place, for example, have you been physically present when national negotiations have taken place? A. No, just on the one occasion that I mentioned the other day, statistical.

Q. Let's take that one occasion, for example. In '64, was it in Chicago? **[557]** A. Yes, sir.

Q. And they pretty much take over a hotel with national committee meetings at one spot in the hotel, and various subcommittees by area or by industry meeting in the same building,

and simultaneously discussing those problems? A. As I recall, there was about three facilities involved in '64.

Q. And once those negotiating committees have come to a meeting of the mind on the National Umbrella Contract, other subcommittees have come to a meeting of the minds on supplements that will apply to respective areas or respective industries, then what happens? A. Well, those negotiating groups go back to their respective principals. Now, how the unions obtain their ratification, I don't know.

Q. But at least as far as the employers are concerned, why, this comes back to T.I.M.E.-DC, or does it come directly to the employers, or to the employers associations? A. It comes back to the executive policy committee of the association.

Q. All right. Once that has been ratified by the employers and you have been advised that whatever machinery the union used has been utilized and the local unions have ratified, then what happens? A. Then, you are still left with some problem with some **[558]** local issues with the local unions, and your signature is subsequently given.

Q. As I understand you, at that point in the negotiations you have got a national umbrella, and for example you have a Southern Conference area supplement that will cover ten southern states. A. Yes, sir.

Q. But you also may have some local issues that will have to be worked out directly with a particular local before you have a contract, is that correct? A. That is what I said.

Q. All right. Then, once that is done, then does there come signature? A. Yes, sir.

Q. And how is that signature—between what entities is that signature? A. Well, it is between the local union and the employer, preceded by the employer—again, I can't speak for the union, but preceded by the employer being notified by its local association that those issues have been agreed upon, and

that signatures are in order, so the signature—the last step actually is giving the signature to the local union by the employer, by the company.

The Court: You're talking about T.I.M.E.-DC signs this instrument when all these steps——

[559] A. (By the witness) Yes, sir, yes, sir.

The Court: The local union in Dallas or Memphis, so forth, they will sign it. A. (By the witness) Yes, sir.

Q. (By Mr. Wells) And you then——

The Court: That is the umbrella agreement. A. (By the witness) No. I'm talking about the supplements.

The Court: Well, I may have missed it. Who signs the umbrella agreement? I thought that was your question, Mr. Wells.

Mr. Wells: No, I'm glad you raised that, Your Honor. The exhibits before Your Honor is Xeroxed, and not very helpful to you. If I may just refer to a booklet as it is actually printed. It is in Xerox form in the Exhibit 203(a).

Q. (By Mr. Wells) I have here in the blue cover National Master Freight Agreement in Southern Conference, Local Freight Forwarding Agreement. You are familiar with that? A. (By the witness) Yes, sir.

Q. Along the lines that you have just been testifying to. This appears to have a signature page on Page 159.

Mr. Wells: May I hand—may I approach the bench?

The Court: Yes, sir. I was looking at 159 here, but that is not the right page.

[560] Mr. Schuler: Does that mean carry the signature, if it's in Dallas, of Local 745 on the one hand and of T.I.M.E.-DC on the other?

A. (By the witness) Yes, sir.

Q. (By Mr. Wells) And similarly, if it's in Chicago—well, if it's in Chicago, it would be Central States, so it wouldn't be that. But if it was in Memphis there would be a contract like that, which is in the Court's hand, signed by Local 667 in Memphis and by T.I.M.E.-DC Corporation. A. (By the witness) Yes, sir.

The Court: Now, this booklet you have handed me is the umbrella agreement as well as the supplements.

Mr. Wells: I believe we stipulated that each of these contracts is actually put out in that form unfortunately, or well, to save paper here, what is here is the umbrella agreement and the Southern Conference supplement at first, but then they come along just with the supplements, but it is the way it is distributed, and the way it is assigned is as in your hand, now.

The Court: T.I.M.E. will sign one with every local.

A. (By the witness) Yes, sir.

The Court: I understand.

Mr. Wells: Now, if Your Honor please, if you will turn there about mid-contract, it will be around **[561]** eighty or ninety, you will see that there are printed signatures by the negotiating committees of the umbrella, at the tail end of the umbrella contract.

The Court: I'd like to see that.

A. (By the witness) It would be probably following Article 38, Your Honor.

The Court: After Article 38?

A. (By the witness) Yes, sir.

The Court: All right, sir. I've got it here. Page 102, 103. These negotiating committees sign it on behalf of the following and they name the various associations, various companies.

Mr. Wells: Well, if I may address a question to the witness in that regard.

The Court: Yes, sir.

Q. (By Mr. Wells) The Court has before him the umbrella contract, which carries signatures of negotiating committees as distinguished from employer entities or union entities.

Now, when those negotiating committees have signed that contract, does it become effective, or does it still require ratification and action at the local union level and the local terminal level before it is actually entered?

A. (By the witness) It still involves ratification.

The Court: Without reading this supplement agreement, does it incorporate in it by reference the Master **[562]** Agreement?

A. (By the witness) Yes, sir.

Mr. Wells: The first hundred pages or so are the Master Agreement. The remaining pages are the Southern Conference Supplemental.

The Court: It must kind of incorporate, though, by reference. I notice you skip from Article 39 in your umbrella agreement and start with Article 40 in your conference.

Mr. Wells: Yes, there are cross references.

The Court: So when the company signs the conference supplement, they are in effect signing the Master Agreement, is that right?

Mr. Wells: Yes, sir.

The Court: That would be the legal effect of it.

Mr. Wells: Plus, as the witness has indicated, there may be a rider of some kind that may apply to a particular locale.

The Court: All right, sir. I understand. Thank you.

Q. (By Mr. Wells) Now, Mr. Henry, up to this point I have been addressing myself to the negotiations of the contract. Now, if that contract became effective in '70 to be effective until 1973, do there come some problems of administration under that contract from time to time? **[563]** A. (By the witness) Yes, sir, sure does.

Q. And that is a big part of your job, I take it? A. That's right.

Q. You will find either some of your employees or some local unions claiming rights under those contracts. A. Yes, sir.

Q. And do the contracts then provide grievance procedures by which those claims of right can be determined? A. Yes, sir.

Q. Very briefly, will you just tell the Court how that happens. Suppose that Nat Wells comes in and claims that he has a claim, a right to some seniority in either the National Master or in the supplement, and he has a disagreement with the terminal manager about it. What happens? A. Well, in matters of seniority, in particular, these matters are submitted to grievance machinery. The grievance machinery is provided for in both the Master and the supplement for the appropriate committee's determination.

Q. If I may interrupt for a moment, I take it that the employee would first present his grievance through his local union steward there on the dock. A. Yes, sir, he does.

Q. And the steward in turn would take it up with his counterpart on the management side, probably a dock foreman or a terminal manager, somebody like that? **[564]** A. Yes, sir.

Q. If they worked it out at that level, that would be acceptable to the parties. A. Yes, sir, but those instances are quite small or quite small in number in relating to general seniority problems.

Q. Then—well, let's get away from seniority to some other grievance then. Any kind of a grievance. The general outline

that is followed is that the steward takes it up with the management on the dock, failing settlement there, and goes to a business representative of the local union on the one hand and the terminal manager on the other to try to settle. A. Yes, sir.

Q. And if they are unable to settle it, then it goes to the grievance committee made up half of union designees and half of employer designees. A. That's correct.

Q. And those are the industry-wide agendas that at least in the south are held approximately every month for the ten southern states. A. Yes, sir.

Q. Is that generally the pattern that is followed, for example, in the West Coast and in the Central Conference or the East? A. Yes, sir, generally. You would have the state level meetings and there can be occasions at the state level where the **[565]** matter continues to be in dispute by reason of deadlock, the parties cannot agree, then they submit it—the parties, meaning the grievance machinery, submits it again to another level known as the Joint Area Meeting, and generally it is resolved there. However, should it not be, it can conceivably end up at the National Conference.

Q. Now, there was some conversation this morning to the effect that in the course either of a grievance procedure or a change of operations procedure, there was some kind of a new agreement. In your experience, does there come any such agreement in the administration of a contract, or does there come just a decision of the body set up under the contract to decide it? A. You lost me, Mr. Wells. I'm sorry.

Q. I think perhaps you were not here for awhile this morning when one of the witnesses talked about this.

There was some colloquy about an agreement during the course of the contract. What I'm trying to find out is whether there come new agreements during that three-year period or whether there merely come decisions by tribunals set up to de-

termine disputes under the contract. A. There is no new agreement that I know of.

The Court: This morning I was talking about contracts and he was talking about agreements. I thought they were one and the same, but I understand the distinction **[566]** that has been drawn. Thank you. I was asking the witness this morning about that, if you remember.

Mr. Wells: That's all. Thank you.

The Court: All right.

Mr. Hunter: Just one moment.

The Court: Yes, sir.

Mr. Wells: One other question.

Cross-Examination (Resumed)

By Mr. Wells

Q. Until Counsel interrogated you this afternoon, have you ever heard in this industry of a distinction between competitive rights and benefit rights? A. I am not acquainted with that term.

Mr. Wells: Thank you.

Mr. Hunter: No further questions.

Cross-Examination (Resumed)

By Mr. Fenton

Q. Mr. Henry, you were asked some questions about the procedure that is followed if a change of operation is requested by the company. A. Yes, sir.

Q. I'd like to hand you what has been marked as Plaintiff's **[567]** Exhibit 203(a) and refer you to the National Master Freight Agreement in this exhibit, and specifically to Article 5 beginning at Section 3 and continuing on through Section 5.

Now, are the procedures——

The Court: Article 5?

Mr. Fenton: It would be about Page 25, Your Honor, of that exhibit.

The Court: I have it.

Q. (By Mr. Fenton) Are the procedures that this change of operation committee follows set out in the National Master Freight Agreement there? A. (By the witness) Are they set out?

Q. Yes. A. No, not in Article 5.

Q. Where are they set out, sir? A. Well, Article 8(e) provides for change of operation.

Q. That is in the National Master Freight Agreement? A. Yes, sir.

Q. All right. Let's turn to Article 8(e).

Mr. Wells: Page 56.

Mr. Fenton: All right. Page 56, Plaintiff's Exhibit 203(a).

Q. (By Mr. Fenton) At Article 8(e), entitled Change of Operation, is it your testimony that this is the procedure that this change of operation committee would follow, sir? **[568]** A. (By the witness) Well, this doesn't specifically set out the exact procedures other than right in the first sentence, first couple of sentences, it provides for it, and then the contract itself provides for appropriate committees to be established.

Q. Which contract are you referring to, sir? A. I am referring to the Master Agreement. I am referring to the supplement agreement.

Q. Right. Now, I believe you testified in response to one of Mr. Wells' questions that if there is a deadlock by a state committee that it would go to a joint conference committee, and if not resolved there, it would go to a national committee, is that correct? A. Yes, sir.

Q. Is the decision of this national committee final then? A. Yes, sir. At any level, if there is a decision, it is final and binding on both parties.

Q. Now, were you here this morning when I asked Mr. Wilkins a question involving a possible change of operations between Los Angeles and Dallas? A. No, sir, I was not here during his whole testimony, and I don't recall you asking him that question.

Q. All right. Well, assuming the company does want to establish a change of operations involving its Los Angeles and Dallas terminals, and Los Angeles is covered by the Western **[569]** Supplement and Dallas is covered by the Southern Supplement. Agreed? A. Yes, sir.

Q. Would that request go to a joint conference committee? A. No, sir.

Q. Where would it go, sir? A. Because it is a more than one conference, a multi-conference. The employer would be obliged under the rules of procedure to address itself to the union chairman, Mr. Fitzsimmons, and the employer chairman of the national committee, Mr. Beagle, and in addressing ourselves we would indicate our present operation and proposed operation, and prevail upon that committee to assign it to an appropriate committee for hearing.

Q. Now, what is that committee that you refer to that Mr. Fitzsimmons and Mr. Beagle are involved with? A. That is known as the National Committee.

Q. Who is Mr. Fitzsimmons to whom you refer? A. He is the President of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

Q. Mr. Beagle? A. He is the Chairman of the Negotiating Committee of Trucking Employers, Inc., and he also serves as General Counsel of Trucking Employers, Inc.

Q. All right. And then what happens, sir, after you submit this? **[570]** A. They then assign it to either the West or the Southern Conference for hearing, designating at that time that because it is a multi-conference that both conferences in this particular case would be represented. They notify the local unions and it is then set for hearing. You are advised as to the date and time that it is set for hearing.

Q. All right. And then what happens? A. Well, depending on the date and time, the employer presents himself, the effected locals have already been notified by return receipt mail, they are present. In this particular case the employer is the moving party, so generally what I have done, I have read my proposal into the record so that there would be no question as to what we are talking about, providing substantial copies for every committee member to know what we're talking about. The local union, if they have questions or objections within the meaning of the contract, they raise them. The employer rebuts them. In fact, frequently there may be questions that the union or the employer have not asked or projected, and the committee, in the interest of the thing being disposed of correctly, will ask questions and proceeding much like this, if you will, and then the parties are excused, the parties being the employer and the involved local union, and the committee members go into an Executive Session and they elect to pass on it or reject it. If they pass on it, why, then, it is effective.

[571] I got ahead of myself just a little bit. They will generally, as a matter of procedure, ask you if you are granted this change of operation when would it be effective, you know, and based on that procedure the employer either gets the change of operation or he doesn't.

Q. Now, would it ever be possible for this committee to deadlock? A. You bet. It's happened.

Q. What happens then? A. Then, it is sent to the National Committee in Washington D.C., which meets quarterly.

Q. Then what happens? A. Well, that committee, like the lower-level committee, is made up of representatives, equal number of union, union participants, and an equal number of employer participants. Then, between those two divisions, again the involved effected conferences are equally represented, and at that point they may rule contrary—well, not contrary, there wasn't any decision, they got a deadlock, but they may rule in fact that you get it. On the other hand they may rule against you, any they, too, could be deadlocked. That could even happen. If they are deadlocked, there is no place to go.

Q. In other words, you can't put the proposals in if the National Committee deadlocks, correct? A. No, sir.

[572] Q. Now, are these deadlocks on the first level you described a common occurrence? A. Yes, sir.

Q. So it is—— A. Well, not—I don't mean to be flagrant. The majority aren't. I would say that in each state level meeting probably ten percent, maybe fifteen percent would be deadlocked.

Q. Now, going back to your first level of committee again, you stated that your commission goes to Mr. Fitzsimmons and Mr. Beagle. Now, the committee that is set up after that, who appoints that committee, how is that chosen? A. It is determined by the respective chairmen.

Q. That is Mr. Fitzsimmons and Mr. Beagle? A. Yes, sir.

Q. What about the National Committee to which a deadlock on the first committee level would go, who chooses that committee? A. Is your question who composes the National Committee?

Q. Yes. And how is it determined who will comprise the National Committee? A. Well——

Q. If you know. A. ——I don't know. I can't speak for the union. But I can speak for the employers. Each conference is represented at the National Committee.

Q. Now, you testified that after the negotiations occur **[573]** with respect to the National Master Freight Agreement and conference supplement, that on the employers' side they go back to the Executive Policy Committee, is that correct? A. Yes, sir.

Q. And that Policy Committee has to approve or disapprove of them. A. Yes, sir.

Q. Now, after that Policy Committee approves of the National Master Freight Agreement and the various supplements, can an individual employer decide not to abide by it? A. No. My answer is no.

Q. No, he cannot? A. Right.

The Court: He's bound right then whether he signs it or not.

A. (By the witness) Right, because he has already given his power of attorney.

The Court: Power of attorney is universal.

A. (By the witness) Yes, sir.

Q. (By Mr. Wells) Perhaps I misunderstood one thing, Mr. Henry. Were you indicating who selected the union committees at any level? A. (By the witness) Well, I did, Mr. Wells, and——

Q. At what level? A. Well, at all levels. I don't mean to imply, however, **[574]** that Mr. Fitzsimmons appoints them at all levels.

Q. Well, what is your knowledge in that regard? A. As far as the unions?

Q. Yes. A. I don't have any knowledge at the first and second levels.

Q. Even at the conference or at the multi-conference level. You just know that at the conference level there are union representatives somehow appointed at that level and similarly at the multi-conference level. A. Yes, sir.

Q. But you did indicate that at that national level you understood how the union appointees were appointed. A. No, I testified that I did not know how the union representatives were appointed.

Mr. Wells: Thank you.

The Court: Let me ask, where does this state conference come in? The state level you mentioned, the state level, is that the same as the conference level?

A. (By the witness) No.

The Court: That is a preceding step?

A. (By the witness) Yes, sir, that is a lesser level.

The Court: So that is the first step, as a matter of fact, after it gets out of the local union-local employers, it goes to the state level, then the conference and then the multi-conference, then the national.

[575] By the Witness: A. The only time you get involved, Your Honor, with a multi-conference hearing is if in fact it is a change of operations involving people in more than——

The Court: Dallas and Los Angeles, for instance.

By the Witness: A. Yes, sir.

The Court: I understand.

Mr. Fenton may have some more questions.

Mr. Fenton: Just one moment.

Cross-Examination (Resumed)

By Mr. Fenton

Q. Now, Mr. Henry, if there should be a deadlock at a multi-conference committee level, does the company or can the—pardon me. Let me restate that question.

Assume that the decision of the multi-state conference committee is adverse to the employer or the employer does not agree with it, can the employer take an appeal from that decision? A. Well, no. Here is what can happen. Can they make **[377]** a formal appeal? No, but what can happen, because through the contract that both parties commit themselves is that the decision of that committee will be final and binding. However, there is isolated situations, meaning not too common, where either party, the party having received the adverse decision, if he can honestly and objectively come up with some new **[576]** substantial information in support of his original contention, he can petition the appropriate committee for a rehearing based on new evidence, and at that point the evidence is considered and it may be considered by the committee to be new and substantial, or they may agree that it is not new, it is not substantial, and that the original decision stands. But if I may, Mr. Fenton, you were talking about a multi-conference. About the only time that you get involved in a multi-conference hearing is if it is in respect to a change of operations, but all other items of interpretation of dispute are not—there is no multi-conference committee per se, not to my knowledge.

Q. Now, if you have a dispute involving seniority within a conference, that will be handled by a conference committee rather than by a state committee, would it not? A. No. Most contracts—most contracts provide the first level is a state level. If the matter is not resolved or if it's deadlocked, it is then referred to the joint area committee, which is the conference committee.

Q. All right. Assuming that you had a seniority issue involving a terminal at, let's say, Dallas and another terminal at Memphis, Tennessee, both are within the Southern Conference, but they are within different states. Now, would you not have to have that resolved by a conference committee? A. You mean if the dispute evolved out of the same issue?

Q. Well, assuming a change of operations between those **[577]** terminals, assume you wanted to redomicile drivers that you had in Dallas to Memphis, Tennessee. A. Well, likely what would happen, because it evolved out of a change of operations, the issue would probably be referred by the state committee to the change of operations committee, who made the original determination. In other words, they, as a practical matter, the state committee would accept the grievance, make no mistake of that, they would accept it, but they would probably pas it on to the joint area committee to that respective change committee for disposition because it was that committee that was involved in it in the outset.

Q. All right, referring you again to Plaintiff's Exhibit 203(a) to the National Master Freight Agreement, and to Article 5, Section 3, and this refers to mergers and absorbing the business of other employers. Are these the proceedings that were followed at the time of the merger of T.I.M.E. Freight, DC International and LASME in 1969? A. Well, I was not in the employ of the company at that time, but I did testify upon search of the company records that all three companies were parties to this agreement, so I would have to conclude if that is the —or have to assume that the language was followed.

Q. And the language you are referring to is that in the National Master Freight Agreement. A. Yes, sir.

[578] Q. All right. A. There are many subjects within this Article 5 setting out all sorts of conditions, whether they are solvent, insolvent, what have you.

Q. Right. You were referred to the name of Mr. Fitzsimmons at the end of these various supplements and also at the end of the National Master Freight Agreement. Isn't it true that Mr. Fitzsimmons' name appears at the end of all of the supplements and each National Master Freight Agreement, which is included with those supplements, to your knowledge? A. Well. on this particular one it does. However, it appears—Mr. Fitz-

simmons' signature appears in the context of being a chairman of the National Over-The-Road and City cartage Policy Negotiating Committee, not in context of being a principal officer of the International.

The Court: You're referring to the certificate above the approval, approval as to form only?

Mr. Fenton: Yes, specifically it would be Page 183 of the first contract and Plaintiff's Exhibit 203(a).

The Court: What page?

Mr. Fenton: Page 183, Your Honor. On the supplements, and it would be——

Mr. Wells: If Your Honor please, you have the city cartage one and he is referring to the over-the-road one is the difference, but I think you are both referring to **[579]** the approval as to form only provision.

The Court: You are saying that the International did not become a party to them.

Mr. Wells: Yes, sir.

Q. (By Mr. Fenton) Is it true that with respect to all of the supplements that Mr. Fitzsimmons' name appears at the end as it does at Page 183 of the first agreement in Plaintiff's Exhibit 203 (a)? A. (By the witness) Well, yes, it appears, but only attesting as to the form of the contract.

Q. But it does appear behind each one of the supplements, to your knowledge.

The Court: Counsel, what is your point here, that they are a party to the agreement by virtue of that?

Mr. Fenton: My point is that they are involved in the negotiations and that they have to approve in fact. Of course, they do approve the contents of these various agreements.

The Court: Not that they are a party to it.

A. (By the witness) He appears at the rear of the supplements as chairman of the negotiating committee and then he appears as general vice president certifying as to the form only.

Q. (By Mr. Fenton) Does that indicate that the Interna- **[580]** tional has approved the form of that contract? A. (By the witness) The form of it.

Q. And that includes the contents of the contract, does it not? A. Yes, but they very carefully assume no liability.

Q. We won't go into the legal implications.

The Court: I have read it. Whether you want to go into it or not, I have already read it. It's in evidence.

Mr. Fenton: No further questions.

Mr. Wells: No further questions.

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[582] **CLAY GEORGE,**

called as a witness at the instance of the defendant, T.I.M.E.-DC, having been first duly sworn, was examined and testified as follows:

[583] **Direct Examination**

By Mr. Hunter

Q. Would you state your name for the record? A. Clay George.

Q. And your address? A. 5423—16th Place, Lubbock.

Q. What is your present employer? A. Department of Psychology, Texas Tech University.

Q. What is your current position with Texas Tech? A. Professor of psychology.

Q. Professor George, could you briefly summarize your educational background? A. I received a B.S. degree in psychology with a minor in sociology from Arizona State University in 1949; a Master of Arts degree with a major in psychology, a minor in social anthropology from the University of Arizona in 1953; PhD. degree in psychology from the University of Houston in 1962.

Q. Professor George, could you briefly summarize your professional employment background? A. From 1953 to 1956 I was instructor and counselor at the Texas A & M University, then College; from 1956 to 1958 I was a full-time doctoral student at the University, student lecturer in psychology, part-time, at the Univeristy, and research psychologist, part-time, for the Texas A & M Research Foundation. From 1958 to 1961, I was assistant professor of **[584]** psychology and director of the reading clinic at Arizona State University, also part-time research.

In 1961 I became a research scientist and later senior scientist for George Washington University, working for their branch called the Human Resources Research Office, which did contract research for the United States Army at Fort Benning, Georgia. That work involved research in training, the operation of training and operating organizations, and had to do with the interaction of persons, including persons of various ethnic group membership and forming operating organizations and determining the degree to which they could meet their mission.

And in 1967 I came to Texas Tech University first as an associate professor, and in 1970 promoted to professor of psychology where I have set up programs in social psychology at the undergraduate and graduate level, where I have been chairing considerable numbers of dissertations and theses, partly in departments other than my own, such as sociology, food and nutrition, industrial engineering and business management.

Many of these researches which I have been directing, helping to direct, have to do with the development of motivation

and differences among people of different ethnic group backgrounds.

I have also been conducting research part-time for the **[585]** United States Army since 1962—no, since 1967.

Q. Okay. Professor George, you have identified the employers with whom you have been associated professionally. Could you please state some of the ancillary projects you conducted while employed by these various employers? A. Specific kinds of research and application projects, evaluating Army training programs, setting up remedial training programs or remedial learning programs in places like the Maricopa Indian Reservation School, which is a federal school, in effect, near Scottsdale, Arizona; consulting with Goodyear Aircraft on the development of research procedures for determining the abilities of people to get information from radar and similar type material; research on small group dynamics and operations, research on larger social organizations called Systems Approach to Research, where one looks at the complex set of factors which vary deferentially with each other to effect the ability of the organization to perform, to carry out the functions.

Q. Any other projects with regard to ancillary matters that you conducted while employed at Texas Tech? A. One part—well, the duties here are very complex, some of the theses and dissertations we have looked into have dealt with dietary matters of Mexican-American rural families on the South Plains area; the development of motivations in white and black children, what is sometimes called a demographic **[586]** gap. That is the gap between the characteristics of persons in various ethnic groups which are closely related to ethnic group membership, such characteristics as standard death rate, social economic level, educational level and so on.

Q. You indicated that you had dealt in studies involving motivational characteristics of black and white children. Any specific locations involved in those studies? A. The student

whose research I have been conducting have carried out their research, since they are on internship for a year, in such places as Miami, New York City, Galveston, as well as in Lubbock.

Q. Professor George, are you associated with any professional or honor societies? A. I am a member of the American Psychological Association, four divisions thereof, and the Community Personal Psychology Association, which are the two most important for the present purposes; the American Association for Advancement of the Sciences and the New York Academy of Sciences.

Q. Have you been listed in any publications as a result of your professional activity? A. I am listed in the American Men and Women of Science and in the International Scholars Directory.

Q. Have you authored any publications in the area of social psychology? A. I have approximately thirty-two publications. A number **[587]** in American Psychological Association journals, some in educational journals, a considerable number of which are technical reports and consulting reports. Primarily, those are for various governmental and private agencies.

Q. Is there any major theme to the bulk of your publications? A. All deal with those aspects of motivation and of personality which determine or influence ones behavior in social settings or with behavior as it is influenced by social setting directly.

Q. Have you ever been asked to read any papers to any professional societies? A. I have read some ten papers to such bodies as the American Psychological Association, two state associations, twice to the Army Human Factors Conferences, and I recently chaired a conference on human factors.

Q. Professor George, could you define the matter of social psychology? A. Social psychology is a branch of psychology which is primarily concerned with the way a person's behavior is influenced by other persons rather than the way their behavior is influenced by external or physical events, like——

Q. What applicability, if any, does social psychology have to the study of minority groups? A. Social psychologists have a long history of studies **[588]** involving minority group behavior, and the attitudes that exist toward persons of various groups, persons within various groups toward various other groups. Originally the largest effort wasn't the attitudinal matter. More and more the efforts have been in the way people treat each other as a function of the group as it affects the development of the persons in those particular groups, so that much of this research, for example, was used by the Supreme Court in determining that separate schools were by definition unequal schools.

Q. What applicability, if any, does social psychology have to the study of employment patterns and employment methods? A. That part of industrial psychology known as organizational is a joint offshoot of industrial and social psychology, and that has to do with interaction between—interplay between management and worker and the way workers get together as a function of their characteristics.

Q. I see. What role does the discipline of statistics have in the role of psychology? A. Statistics are both descriptive and hypotheses. They play a very major role. We wouldn't have philosophers if we didn't have statistics as a check on our concepts.

Q. What specific example could you give to illustrate the usage? A. If there is a hypothesis that two factors related to **[589]** each other, one would apply a statistical test, correlation for correlation, or to check that. If it is hypothesized that one group does better or worse than other groups on a certain kind of task, one would test the probability that the average performances of those various groups might have occurred by chance or might not have occurred by chance.

Q. What is your personal background in the study of statistics? A. Following thirteen semester hours of mathematics through deferential calculus, I had three semesters of under-

graduate statistics, six semester hours of graduate level statistic training.

Q. Have you ever taught statistics? A. I taught a statistic course at Arizona State University and currently am directing the research of graduate students, training them in the appropriate use of statistical methodology.

Q. Professor George, are you familiar with the subject matter of this civil action involving the United States Government and defendant, T.I.M.E.-DC? A. Yes. I have examined some case authority documents, some cause of action and some documents made available by Mr. Hutchinson of T.I.M.E.-DC.

Q. What were the nature of the documents submitted to you by Mr. Hutchinson? A. They showed terminal by terminal the percentage of **[590]** employees that are white, the percentage of employees that are black, the percentage of employees that are Spanish surnamed Americans, and percentage other minority, and along with that were certain census data showing the percentage of each group in the standard metropolitan statistical area.

The Court: In the city or the metropolitan area?

A. (By the witness) The metropolitan area.

Q. (By Mr. Hunter) Professor George, I submit to you a document which was previously identified as Plaintiff's Exhibit 241. Are you familiar with that document? A. (By the witness) Yes, I have inspected this document.

Q. Have you conducted a study of that document, also? A. Yes.

Q. Pursuant to your study of the various materials submitted to you, are you familiar with the United States Census Bureau data as it relates to statistics as they relate to where T.I.M.E.-DC has terminal locations? A. Yes.

Q. Have you also familiarized yourself with the percentage of minorities that the census bureau data discloses present in those various locations? A. Yes, generally familiar.

Q. Are you also familiar with T.I.M.E.-DC's employment statistics as they relate to number of employees and number of **[591]** minorities at each of their specific locations? A. Yes.

Q. In what matter did you become familiar with these various statistics? A. Through the documents made available by Mr. Hutchinson. For example, a document entitled Minorities as a Percentage of Population Compared to T.I.M.E.-DC's Percentage of Minority Employees as of 12/31/71, and through examination of various Census Bureau reports available in the University library.

Q. Pursuant to your study, have you made a comparison of the various statistics as reflected by the United States Census Bureau statistics and T.I.M.E.-DC employment statistics at each location? A. Yes.

Q. Have you, as a result of your various studies and comparisons, formed any conclusions based upon the comparison of the two sets of statistics? A. I formed some strong impressions and the major impression is that one really cannot form conclusions from these kinds of statistical evidence that the numerical data available are not sufficient for a conclusion about this kind of question.

If I may refer to Plaintiff's Exhibit 241, one of the first things that one notices is that there are a number of facilities where the percentage by T.I.M.E.-DC is actually greater than the percentage of Negro in the given **[592]** standard metropolitan statistical area, such as Denever, and Phoenix, Arizona on the second page is another example, and that this tends to occur only where there are large numbers of employees, large numbers of employees as known to me by the documents made available by Mr. Hutchinson.

Q. Are you referring to number of employees at the T.I.M.E.-DC location? A. At the given terminal, right, where there is a large number of employees in a given terminal and where there are large numbers of persons available for employment in the standard metropolitan statistical area. Then there is a tendency for the employment record to look relatively good. That is for T.I.M.E.-DC to be employing relatively large numbers of Negroes relative to the percentage in the metropolitan area, but where the terminal is in a fairly small facility, or drawing from a fairly small population of potential employees, or where there are just very, very few employees at all on the part of T.I.M.E.-DC. Then the data looks as though there are fewer Negroes being hired than would be expected.

The Court: Well, now, where would be an example of that?

A. (By the witness) Hoobs, New Mexico on the first page.

The Court: All right.

A. (By the witness) One, two, three, four, five, six, seven from the bottom.

[593] The Court: Yes, sir, I see.

A. (By the witness) One hundred percent white employees. From the city data it would appear that there should be perhaps approximately seven percent non-white employees, but when one realizes that there are only four employees in Hobbs period, it becomes apparent that a change of a single employee would change the figures so that if that happened to be a minority group employee, it would immediately have twenty-five percent minority group employees in that facility.

Wherever there is a small, very small number of employees, and this number is crucial to being able to conclude anything from these tables. One needs to have some notion of the working age population and the number of employees in the place, and there is so much more striking examples than that in a number of places, like on the second page, fourth from the

bottom, Tacoma, looks bad again. It's a hundred percent employees white, while there are only ninety-three percent whites in the standard metropolitan statistical area, but there is only approximately one employee in Tacoma and one employee would most likely by chance, with no—with a non-chance discriminating factor coming in at all, to have come from the ninety-three percent population rather than the seven percent population.

Toronto below that, same pattern. There are quite a number of very small——

The Court: Talk about San Antonio there a **[594]** minute. What is your analysis of that?

A. (By the witness) All right. Let me find that quickly here. San Antonio. I don't have the number of employees here for San Antonio.

The Court: Well, it's a little aside from what you're talking about. What is the SMSA?

A. (By the witness) Standard Metropolitan Statistical Area.

The Court: They said there are ninety-two percent white, 6.65 Negro and 1.25 other.

A. (By the witness) Yes, Your Honor.

The Court: Where would the Mexican-American be in that classification?

A. (By the witness) The Mexican-American in that classification from census data are going to be in the white category, but for the T.I.M.E.-DC data, they are going to be in the other category.

The Court: So that doesn't relate very well, does it?

A. (By the witness) This is another problem in interpreting this data.

The Court: Go ahead. That was kind of off the line of thought you had. I just wanted to ask you.

A. (By the witness) San Antonio and El Paso are both good examples, because in those places there are large numbers **[595]** or large percentages in the other category, and those are almost surely primarily Spanish surnamed Americans, although they don't——

The Court: You just can't use those figures, can you?

A. (By the witness) You really can't make these comparisons across appropriately. Actually, you have to have large numbers of employees before you can conclude th' : you are looking at non-chance deviations, and you do have the problem of Spanish surnamed differently categorized in the different cases, but I think the major potential error is that not taking into account the number of employees. If you take into account the number of employees, the hundred percenters add up to nineteen, but approximately half of those have less than ten employees. Another five have ten to nineteen employees; only two were in the twenty to thirty-nine range, three are in the forty plus range, and one of those is Canadian, one of them is Sallisaw, for which there is no evidence for any appreciable number of minority groups in the city. And the only one that is really questionable is Buffalo, which is relevant in the area and has approximately forty-seven employees, but even there these are being drawn from some six hundred thousand persons of working age, and it is easy to imagine drawing from a pool of six hundred thousand as much as fifty and picking all persons from the ninety-two percent majority group.

[596] Q. (By Mr. Hunter) Professor George, having examined that document and various other material submitted to you, what is your professional opinion as to a comparison of the United States Census Bureau data which reflects the percentage of minorities in a particular community with those of the same minority employed by T.I.M.E.-DC? A. (By the witness) In a

sense, the data available are too imprecise. We need to have a lot more information than the percentages of minority groups in the standard metropolitan statistical area, and the percentage in a facility in that area, and the number of people employed and the number of people available for employment.

Even knowing these four things, we still don't have fine enough figures to make any kind of real conclusions from these data, or even any indication.

Q. I submit a document which has been previously entered into evidence as Defendants' Exhibit BBB. Are you familiar with that document? A. Yes.

Q. In what manner are you familiar with that document? A. I selected and put these material together.

Q. Is this the result of your study of the various materials submitted to you? A. Yes.

Q. In examining that document, could you identify the **[597]** significance of Table 1? A. Table 1 has to do with the question of age structure within populations. If the average age of a given population is much younger than that of another population, then that given population will have fewer persons employed because a larger number of their members will be under the age of employment. So it is important to see if this may be happening among the three ethnic groups at question.

Table 1 has to do with fertility rates of women age thirty-five to forty-four. These particular ages is to get in most of the childbearing that is likely to occur. The average number for Mexican-Americans was determined to be 4.4; for blacks, 3.6, for a total population of 3.0, which indicates that where there are larger numbers of children per family in a given ethnic groups, they are likely to be a lower percentage of that group which is of employable age.

Table 2——

The Court: Wait a minute. Explain that thirty-five to forty-four again.

A. (By the witness) This age was picked by the Census Bureau because most childbearing will have occurred in most women.

The Court: Will have occurred?

A. (By the witness) Yes, so that these will be completed families in most cases.

[598] The Court: I understand.

Q. (By Mr. Hunter) With reference to Table 2, what is the significance of that? A. (By the witness) Table 2 has the median ages for whites and non-whites, whites including Spanish surnamed Americans in this particular kind of breakdown, and the point here is that if non-whites have lower median ages, more of them will be age below when people go to work in our society. It is indicated that for 1950 non-white age is 4.7 years. Well, there is a median difference, and roughly for practical purposes we can call it an average age of 4.7 years younger than whites. In 1960 it is 6.8 years younger than whites and for 1969 it's 8.1 years younger than whites.

Q. What is the significance of the increasing difference? A. It looks as though white median ages are not decreasing very much over decades, which indirectly reflects the fact that our birth rates are stabilizing, while for non-white the median age is decreasing, apparently over decades. Of course, this may change in decades, but at the moment, at least, there tends to be a decreasing age for persons defined in the census as non-whites, which would indicate that that population would be getting younger. That is, there would be actually larger families.

Q. Okay. You have indicated earlier that in this data in Table 1 and 2 white would include Spanish surnamed persons **[599]** A. Right.

Q. Accordingly, if Spanish surnamed people were excluded from the white figures, what tendency would this have? A. You would expect it to be more marked from Table 1, which

shows the Mexican-American families are larger than blacks or whites, or Anglos, one should say.

Table 3 makes the same point. The percentage of each ethnic group in the twenty to sixty-four years of age bracket, which will get most of the working age force, whites approximately fifty-three percent, non-whites, approximately forty-eight percent, so there are more whites relative to the total number of whites who are working age than would be true of non-white populations.

Q. Again, this white calculation includes Spanish surnamed, is that correct? A. Right.

Q. If that was excluded, that difference, it would be even greater. A. Somewhat, but you're talking about a relatively small and almost unmeasurable population when you talk about Spanish surnamed.

The Court: What is the percentage in Texas, for instance?

A. (By the witness) In Texas?

The Court: You're talking about nationwide **[600]** on these figures, are you not?

A. (By the witness) Correct.

The Court: That's all right. You needn't answer that.

A. (By the witness) Well, I have seen an estimate of ten percent. That is the most recent.

The Court: But this is nationwide, these figures.

A. (By the witness) Right. The nationwide estimate is ten percent. There are Irish names, there are American Indians who have Spanish surnames, there are a number of problems in trying to get a count on that.

Q. (By Mr. Hunter) With reference to Table 4, could you give us the significance of that table? A. (By the witness) Okay. Table 4 was developed for United States Commission

on Civil Rights to determine what percentage of high school students and college students should be under a hypothesis of no bias or no discrimination attending high schools and colleges.

From the Anglo-Spanish surnamed American bracket, any sub groups, they did this by counting the number in five southwestern states. These included Arizona, California, Colorado, New Mexico and Texas. This is 1960 data. Counting the number age zero to four and said that number will be a base number, and we will figure the number in each succeeding **[601]** age range as a percentage of that, so the large number of Anglo zero to four compared to the number of Anglos age twenty to twenty-four, such that there are only 58.4 percent as many people of the older age as of the younger age.

For the Spanish surnamed, if you take the zero to four years as a hundred percent, the number of people in that category, and take that and take the number of persons age twenty to twenty-four as a percentage of that, it's only 45.2 percent. That is, there is a steeper drop so that you have relatively fewer old persons and relatively more virtually infants in the zero to four category.

The black ethnic group shows essentially the same picture as Spanish surnamed. 46.4 percent at age twenty to twenty-four.

This table, of course, essentially tells what the other tables tell for the population as a whole, but the major significance is the development of this table by the Commission on Civil Rights, so that they could correct for different age structures among the different ethnic groups in trying to determine how many of each group would be expected to be found in high schools and colleges.

Q. Okay. Professor George, Table 5 is next. Does that have a relationship to Table 1, 2, 3 and 4, or is that a separate matter? A. This again is a separate kind of development. The first **[602]** four tables point out the importance of taking age structures within population into account. Once it was done,

there are still others and less easily qualified characteristics that may affect any employers record of employing minority group persons.

An important point that is often brought out as a point dealing with general nutrition, general vitality, general health status, general ability to operate in, get along in, exert influence over, the social system per se, there are not easily obtainable measures on each one of these little things, but there is a large, not too precise, but still very meaningful kind of index developed by the Census Bureau called Socio-Economic Status.

Q. What is Socio-Economic Status? A. The exact measurement process varies some from one census period to another, but in essence, what is looked at is the income, the educational level, the possession of automobiles, the possession of telephones, radios, subscriptions to newspapers, magazines. In general, being in communication, being in contact, whether there is a bathroom in the home or not, kind of a list of things that roughly measure goodness of living or goodness of life.

Q. With regard to Table 5, this socio-economic status figures you have are from the United States Census Bureau. A. These are taken directly from the Census Bureau.

[603] Q. I see. A. The possibility is that—I should say the theory, a theory is in social anthropolgy and sociology and social psychology is that if a subject group is maintained, is generally deprived, depressed, kept down, maintained at low socio-economic levels, there tends to become in some proportions of that sub-group population a kind of sub-culture characterized by apathy, by helplessness, by improper diet, by high frequency of illness, by a number of things that sociologists call social pathologies, which is kind of a horrible language, but sometimes we have to use it.

The indications from this table are that the highest socio-economic blacks are found in the west. The lowest socio-economic

blacks are found in the south and these are regions as defined by the census, while there are moderate levels in the northeast and north central. They are very, very close to each other. One could combine those two.

It is also shown, of course, that there are what Mr. Patterson happens to call a demographic gap, that is, that the Negro in each region is lower in socio-economic status that than of the comparable white group in that region, but the great, really striking differences are between the south and west Negro. This difference, which was hypothesized, might relate to the success with which T.I.M.E.-DC has been able to employ relatively large numbers of blacks in the various **[604]** facilities in different parts of the country.

So what was done to develop Table 6, based on the rationale developed in Table 5, was to re-order the T.I.M.E.-DC data and ignore their Western Division, but take the terminals that are in the west as defined by the Census Bureau, find out whether each of these was particularly high or particularly low in terms of its variance from black hiring, as it would have been expected, based on the percentage of blacks in the standard metropolitan statistical area relevant to that terminal, but the study was limited to only those facilities with over fifty employees for the same reasons outlined briefly before. If you are not looking at a fairly large sample, your statistical percentages are going to be highly misleading in many instances. So you have to look at some fair number before—fairly large number before you can have anything to look at at all.

Q. Am I correct, Professor George, in that assuming that these totals refer to T.I.M.E.-DC terminals with fifty or more employees? A. Correct. There are twenty-six such terminals. I just simply divided those into half, or the thirteen that looked best, that of low variance between what was or would be expected SMSA data and the percent employed and the thirteen that looked less good where there was greater variation.

All seven of the terminals in the west where socio-economic status is relatively high for Negro are in the good hiring half **[605]** of the twenty-six terminals.

Q. Okay. Professor George, for the sake of clarity, on column 1 you have variance from expected black hiring. What does that constitute? A. Okay. The plus 2.7 there under the low or plus refers to Denver, for example. That is, Denver actually had a larger number of Negroes employed in the terminal there, the T.I.M.E.-DC terminal there than there were in the SMSA for Denver, so that is the kind of variance that is a plus variance, and the others are plus or below to a relatively small degree, so it is a low variance or actually a plus direction for those thirteen terminals that go into that top row. There were not enough terminals in the two Northern Regions to look at each one separately, so those were combined, and again the justification is in part that the socio-economic status of Negroes in those two regions average essentially the same anyway, so those are combined into a Northern Region. One of those eight fell in the good hiring practices category, and seven of them fell into the relatively less good hiring practices category.

For the south, five apparently would fall into the low, or I should say the better hiring category, and six into the less good hiring category, but four of those are in Texas facilities, are essentially western communities and probably should be considered with the higher socio-economic west than the lower economic south. If that were done, it would show a **[606]** very strong trend for T.I.M.E.-DC to be hiring relatively more black employees in those communities which exist in regions where blacks in general have a relatively high socio-economic status, more education, more communication with the rest of the world, more access to transportation and so on, relevant kind of factors there. So an alternative hypothesis opened up is that T.I.M.E.-DC may be hiring blacks in proportion to the availability of blacks who have pulled up by the boot straps enough to apply for work, to keep work long enough to end up in the

statistics, and there would need to be some permanence in the work experience to end up in the statistics, so this persistence characteristic is surely also important.

Q. Okay. Professor George, what was the basis again of including the four Texas facilities in which you consider them essentially western communities? A. These include two Lubbock facilities, El Paso facility, and a Dallas facility. In all of these you have quite a bit of Mexican-American influence, or Spanish surnamed influence. You have a subcultural characteristic more of the western United States than of the Southern United States. Texas is more [illegible] Arizona and New Mexico than it is like Mississippi and Louisiana, for example.

Q. Is this a conclusion held by people other than you, also? A. Yes. Texas is frequently classified, and all classifica- **[607]** tions are somewhat arbitrary, frequently classified as western or southwestern rather than southern.

Q. By whom? A. By demographers. There are a number of sociologists and demographers who would follow this kind of classification.

Q. Examining Table 7, what is the significance of that as a result of your studies? A. One characteristic of extremely socioeconomic status is that you are going to have higher death rates in the population, and in a way death rate comes closer to the question of vitality level, the question of relative freedom from illness, the availability of medical care, things like this, which are involved in one's continued improvement over a period of time. These data are standardized death rates. These are—these represent the number of persons out of each thousand persons in the named ethnic group who died in a given year. So for the first state, Alabama, listed, would you say in 1950 out of each thousand whites, nine died, and out of each thousand Negroes, 13.7 died, or about five more Negroes per thousand than whites per thousand.

For 1960 the difference is still there for the southern states between white and black, but it is not quite as large, and this is what Mr. Patterson has called a demographic gap. It's beginning to close. It is closing very, very slowly.

It is similar for fifteen non-southern states. We do **[608]** see the same difference here, although the differences are again not quite as great. This is one example of a special categorizing of states into a region for a particular kind of study. These southern states certainly do not include Texas, but they are picked to be most representative of states where what might be called the southern culture is carried on while the fifteen non-southern states exclude places like New York or other places that are so large that they can't be matched with a comparable southern state, but are typical of non-southern states which can generally be compared on some important basis with the southern states. So for a given purpose, the way one would categorize states, a region would have some leeway.

Q. What is the significance of the distinction between the south and non-south states? A. Actually, at first glance, you can see some very high death rates in some southern states, and some equally high ones in some non-south states, but generally speaking, Negroes state by state, south or non-south, are exhibiting greater standardized death rates reflecting in part differences in availability of medical, proper nutrition, and so on, and these certainly have something to do with the vitality and the relative continuing freedom from illness that has something to do with holding jobs or even having or being able to get out and get a job or being able to accept a job.

[609] Again, we are looking at fairly general broad kind of statistics. We can get in a little bit finer, although not terribly so, and only for isolated cities here and there. Table 8 illustrates the new TB case rate for a hundred thousand population in New York City for 1969. It gives this for two factors, one population density, how many people are crowded into a block, how many families per building, how many people per room within

the building, which is kind of a crucial thing that goes into population density, and by income level. The new TB case rate per hundred thousand is highly sensitive to population density. For low income people living in highly densely populated places, and this hits particularly both Black Harlem and Puerto Rican Harlem, your new TB case rate was 79.7, which is dramatically higher than that of medium and higher income.

The Court: Does that prove anything more than it is highly contagious?

A. (By the witness) Yes, sir, because there are other variables involved. For example, high income people in high population density situations have less of it, and there are also a host of diseases that really are not contagious in the same way that tuberculosis is, like heart failure, for example. That is also related to density and income level. There are a number of health problems. It happened that this particular article was primarily concerned with this TB case rate, and a **[610]** part of the concern was that much of the problem is due to being able to find the case before it gets to be advanced. You do get quite a few in medium population low income, you do get quite a few in medium income, but they do get most of those before they are advanced cases, so they don't get so many deaths from it where you get the real debilitating situations where you have the low income, high density situation, and of course, part of it is an easier contagion. Also, people don't see physicians so often, so they don't get the diagnosis very quick. If they don't get the diagnosis very quick, it's going to be a much more serious outcome, and really highly debilitating as far as being able to work is concerned.

Now, in addition to these kinds of problems, there are certain customs that develop within some populations. One set of these customs defines what the social anthropologist, Oscar Louis has defined as the sub-culture of poverty. He uses this term much as sometimes we use the term hardcore unemployed. Sub-culture of poverty does not always occur when people are poor.

It occurs when people are poor and are apathetic, and feel helpless and have limited access to medical care and so on. So it is a whole interrelated set of factors that is defined as the sub-culture of poverty, of course, there are whites in the sub-culture as well as there are black and Mexican-Americans.

The Court: What was the question?

[611] Mr. Hunter: Pardon?

The Court: What was your question?

Mr. Hunter: The question is determining the validity of a comparison of mere statistics——

The Court: That is a statement. What is the question?

Mr. Hunter: The question addressed to him was in your professional opinion what is the validity of comparing minorities statistically as was available from the United States Census Bureau data with the statistics available in T.I.M.E.-DC employment statistics.

The Court: Has he related this table to T.I.M.E. employment yet?

Mr. Hunter: Yes, I believe he has.

The Court: Go ahead. Let's go to the next table then.

Q. (By Mr. Hunter) Go ahead, sir. A. (By the witness) A part of the sub-culture of poverty is that the social structure in that sub-culture is based mainly on family relationships and not on associations among persons in the same business, trade, profession, fraternal organization, private club, so on, so that one expects less mobility both within and between states when this sub-culture is occurring.

The date on Table 9 indicates, as have been indicated in **[612]** many other places, that there is more mobility both within and between states for white sub-population than for black sub-populations, and this has relevance to hiring because when it is

necessary to move from one place to another to get a job, there is a lesser willingness in some sub-populations than in others, and that willingness will be reflected in, almost surely will be reflected in unemployment statistics.

Q. Professor George, then what is the significance of the various tables beginning with 5 through 9 and including 10 with regard to the validity of using the kind of minority statistics used by the government to compare total numbers of minorities in communities against the percentage of those same minorities at T.I.M.E.-DC terminal locations? A. I think for each standard metropolitan statistical area, you would need to know a good deal more about the characteristics of the people that run the terminal and the characteristic of the population from whom people are hired, from which people are hired, the health status of these hiring groups, the skill levels of these groups from which one wishes to hire people, the motivational characteristics of these persons, age structure of these persons and so on.

In other words, we would need much finer statistics to really be able to interpret the relatively imprecise and approximate kind of statistics that we have available.

The Court: Well, let's see, you're saying **[613]** that there is just more factors to be taken into consideration.

A. (By the witness) Yes, sir, I am suggesting some of them.

The Court: Yes, sir. All right.

A. (By the witness) The final table in this series is a hypothetical curve by J. R. Cowan, D. W. Tiffany and P. M. Tiffany, Rehabilitation Psychologists, who probably have as much or more experience than anybody in the business with job rehabilitation programs. This is a program that is to develop some more favorable attitudes toward employment and to increase motivation for employment among the so-called hardcore employee. Tiffany points out that one of the real problems is that where there are lots of unemployed persons, and that is at the low skill end, there are relatively few job openings. Where

there are slightly fewer manpower resources than there are jobs available, you are at the high skill occupational level and the real problem that the employer faces is he tries to hire more minority group members and more hardcore unemployed is to fit increasingly more persons of average and lower relatively skilled level into decreasing numbers of jobs, and I believe that Tiffany's point is well taken here.

Q. Professor George, according, as a result of your various studies and your position as a social psychologist, if a comparison of statistics shows that T.I.M.E.-DC employs fewer minorities than live in the various communities it has locations, **[614]** give us your professional opinion as to whether or not that, in your mind, justifies a conclusion that T.I.M.E.-DC engages in a pattern and practice of discrimination throughout its business organization.

Mr. Fenton: Your Honor, I object to that question as asking for a legal conclusion which is outside the knowledge of this witness.

The Court: He has given the answer already in all these questions and that has been no, isn't it?

A. (By the witness) Yes, sir.

The Court: Let's let the answer in. It is merely a summary of what he has already testified to.

Mr. Fenton: I'll withdraw.

Mr. Hunter: I have no further questions of this witness.

The Court: Have you made any studies yourself taking in the facts that you say should be taken into consideration in order to make a determination for yourself as to whether or not there have been any pattern and practice of discrimination?

A. (By the witness) I tried, but I simply couldn't get enough information and enough variables to really be able to pin it down.

The Court: There's just not enough **[615]** available sources that you had, at least.

A. (By the witness) Yes, sir, I really don't think it is available period.

The Court: The only information available is that being used by the plaintiffs in this case, you just say it's not accurate enough under the circumstances that you have outlined.

A. (By the witness) Yes, Your Honor.

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[633] **JAMES W. FRAZIER,**

called as a witness at the instance of the defendant, T.I.M.E.-DC, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schuler

Q. Will you state your full name for the record, please? A. James W. Frazier.

Q. What is your business address, Mr. Frazier? A. 29001 Hopkins Street in Hayward, California.

Q. What company are you with and what is your position? A. T.I.M.E.-DC, Incorporated. I am the Hayward, California terminal manager.

Q. How long have you been at Hayward, California? A. Two years, one month.

Q. And how long have you been with T.I.M.E.-DC? A. Seventeen years in August.

Q. Are you the same James Frazier who was deposed in Hayward, California about a year ago in connection with this lawsuit? A. That's correct, sir.

[634] Mr. Schuler: Your Honor, the testimony of this witness today is not offered in lieu of his deposition, it is offered in the nature of rebuttal to the testimony of Mr. Richard Stinson, who was a witness here last week.

The Court: All right. Now, I don't believe—Was Mr. Frazier's testimony summarized, was it one of the nineteen summaries?

Mr. Fenton: Yes, it was, Your Honor.

The Court: All right. But I will permit this testimony to come on it and while Mr. Frazier is here, if anybody wants to develop his testimony more fully, let's do it while he is here.

Q. (By Mr. Schuler) Mr. Frazier, do you know a Richard H. Stinson? A. (By the witness) Yes, sir.

Q. Were you at the Hayward terminal in March of 1969? A. No, sir.

Q. Were you at the Hayward terminal in early and mid 1971? A. Yes.

Q. And were you terminal manager at that time? A. Correct.

Q. Now, there has been some prior testimony in this record that Mr. Richard Stinson wrote to you to ask for a line driving job, and that he later came in and asked about applications; that he gave Mr. Foster a resume of his ability as a driver; **[635]** that he came back to see Mr. Foster later, he called Mr. Foster three or four times and never got an application.

Would you tell us whether you had any communication from Mr. Stinson in the early part of 1971?

Mr. Fenton: Your Honor, I object only to one statement in that predicate, and that is, that he never got an application. I believe Mr. Stinson's testimony was that he did get an application from Mr. Foster, but with that objection——

The Court: But that was never acted upon.

Mr. Fenton: ——we would let the record on Mr. Stinson's testimony reflect that. I have no objection. I just want to note that one exception.

Mr. Schuler: My understanding of the testimony was that he said that he did not get an application but the record will reveal it.

The Court: Your question, though, goes—Go ahead.

Mr. Schuler: Yes.

Q. (By Mr. Schuler) Did you receive an inquiry from Mr. Stinson? A. (By the witness) I received a letter dated April 26th, 1971, signed by a Mr. Stinson.

Q. Do you have a copy of that letter with you or the letter itself? **[636]** A. Yes, sir.

Q. May we have that, please?

Mr. Schuler: May we have this marked as an exhibit, please?

The Court: Yes.

Mr. Schuler: This will be Exhibit OOO.

Q. (By Mr. Schuler) The exhibit that is marked as OOO, is that the letter that you received with the signature of Mr. Stinson on it? A. (By the Witness) That's correct.

The Court: All right. I'm going to admit this. The purpose is for impeachment, I assume.

Mr. Schuler: We will make copies of this available.

(Defendant T.I.M.E.-DC's Exhibit OOO received into evidence by the Court as Defendant, T.I.M.E.-DC's Exhibit OOO —Letter.)

Q. (By Mr. Schuler) Mr. Frazier, did you hear from Mr. Stinson any time after you received this letter of April 26th? A. (By the Witness) Yes. I received a phone call some two weeks later, but I don't recall the date.

Q. And what was the substance of that phone call? A. Well, basically, he was inquiring as to whether we did have any positions. Just a general conversation, and at that time I just told him about the change of operations and the fact that we probably would be reducing the board rather than hiring.

[637] Q. Do you mean line driver board? A. Correct.

Q. And did you in fact advise him that there would be reductions rather than increases at that time? A. Told him there would probably be reductions. The change of operations hadn't been heard at that time.

Q. Did you tell him anything about the inquiry in his letter for an application, or anything about coming in? A. Yes. I asked him for a formal application for employment and told him he would be considered if and when we hired on that basis.

Q. Did he later come in? A. Yes, I met him later briefly, several months later, I believe, quite by chance.

Q. Was an application blank offered to him at that time when he came in? A. Yes, sir.

Q. Did he accept the application blank? A. It is my understanding he did not.

Q. Now, did you hear from him at any time after that? A. Yes, sir. Oh, perhaps three, maybe four months after I had met him, I had another telephone call.

Q. What did he say at that time? A. About the same general conversation that we had the first time. He asked if we had developed any openings and **[638]** stated again that he wanted to go to work for us if we had any openings.

Q. Did you have any conversation about an application blank when he called you that time? A. I did.

Q. What did he say and what did you say? A. He declined the application, stating that he considered this letter his application for employment.

Q. And he was referring back to this letter of April 26th, 1971? A. I assume he was. It was the only letter that he wrote me.

Q. Have you ever seen the signature of Mr. Stinson? A. No, sir.

Q. Do you know whether in fact he wrote this letter? A. No, sir, I don't really know.

Q. Is it sufficient for your purpose, for a person to write in and say he is a qualified driver? A. No, sir.

Q. Have you heard any further from Mr. Stinson? A. Not in several months.

Mr. Schuler: Thank you, Mr. Frazier. I have no further questions.

The Court: Refresh my memory here. Is **[639]** Mr. Stinson the one that is now working for another motor transportation company out there as a road driver?

Mr. Fenton: Your Honor, I believe he was working for either Transcon or Tri-State as a road driver, and then when they moved their operation from San Francisco to Omaha, he declined to go to Omaha, but he was employed as a road driver with one of those two companies.

The Court: I have him placed. Go ahead.

Cross-Examination

By Mr. Fenton

Q. Mr. Frazier, you have previously identified Defendants' Exhibit OOO, which is a letter addressed to you and signed by a Richard H. Stinson.

Now, in that letter does Mr. Stinson identify his race? A. Yes, he does.

Q. And at the time you received that letter, did you have any black line drivers at your terminal? A. No, sir.

Q. Are you interested in hiring blacks as line drivers? A. Yes, if and when I need additional line drivers.

Q. Do you know any reason why Mr. Stinson is not qualified to be a line driver?

Mr. Schuler: I object, Your Honor. I think there is nothing that was indicated in the questioning that would show that Mr. Stinson ever made his qualifications **[640]** known to the company.

The Court: The question is whether he knows of anything, and he can state whether he has any personal knowledge of the qualifications of Mr. Stinson or not. I'll overrule the objection.

A. (By the Witness) No, sir, I don't have any information either way.

Q. (By Mr. Fenton) All right. Now, you testified that after Mr. Stinson wrote, that he later came in, and you thought that an application was offered to Mr. Stinson, but it was your understanding that he didn't accept it.

Did you personally offer the application to Mr. Stinson at that time? A. (By the Witness) In person?

Q. Yes. A. No.

Q. Do you know who did? A. I learned later from my line driver supervisor that he had offered him an application that morning.

Q. Who was that, sir? A. Mr. Foster.

Q. You personally did not offer him the application, is that correct? A. Only twice on the telephone.

Q. And on the telephone you invited him to come in and get **[641]** one, is that correct? A. Twice, yes, sir.

Q. Now, you stated that you asked Mr. Stinson for a formal application. Aren't application blanks furnished by the company? A. That's correct.

Q. So, in other words, the company would have to give the application blank to Mr. Stinson, would it not? A. Right.

Q. Mr. Frazier, I'll hand you what has previously been marked as Plaintiff's Exhibit 6, and this is a line driver roster for your terminal as of December 30th, 1970. Do you recognize it as such? A. I have seen the list before.

Q. And do you see the last name on there, Alvin Buckley with a seniority date of 9/4/70? A. Yes, sir.

Q. Has your terminal hired any line drivers since that date? A. No, sir.

Q. Have they used any casual line drivers since that date? A. I'm sure we have.

Q. Do you have any idea how many you have used? A. No, sir.

The Court: That was November 4th, 1970?

Mr. Fenton: September 4th, Your Honor, 1970.

The Court: That is his seniority date?

Mr. Fenton: Correct. I think that's all I have.

The Court: Thank you, Mr. Fenton. Mr. Wells?

Mr. Wells: No, sir.

Mr. Schuler: Just one or two questions.

Redirect Examination

By Mr. Schuler

Q. Mr. Frazier, did you offer an application to Mr. Stinson? A. Yes, I did, on two occasions.

Q. And did he indicate that he was willing to fill one out? A. No, sir. He declined both times.

Q. On what grounds? A. Well, he stated that he considered the letter his application for employment.

Q. I'd like to show you Plaintiff's Exhibit 214, which is part of the Motor Carrier Safety Regulations, Part 391, Qualifications of Drivers, and ask you if you are familiar with the provisions of Sub-Part C, Paragraph 391.21, Application for Employment, that requires that a person shall not drive a **[643]** motor vehicle unless he has furnished the motor carrier that employs him with an application for employment that meets the requirements of Paragraph B of this section? A. Yes, sir, I am aware of that.

Q. And is that the basis for your requiring a person to fill out an application? A. It is one of the bases.

Q. All right. In the first conversation with Mr. Stinson, did you tell him that there were no openings at that time? A. I certainly did, and I told him about the change of operation that was contemplated.

Mr. Schuler: All right. Thank you. No further questions.

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[644] **DENNIS L. ANDERSON,**
called as a witness at the instance of the defendant, T.I.M.E.-DC, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schuler

Q. Please state your full name for the record. **[645]** A. Dennis L. Anderson.

Q. What is your business address, Mr. Anderson? A. 2598-74th Street in Lubbock.

Q. What company are you with and what position? A. T.I.M.E.-DC, Inc. I am director of transportation.

Q. How long have you been with T.I.M.E.-DC, Mr. Anderson? A. Twenty-five years last month.

Q. How long have you been director of transportation? A. Since October of 1969.

Q. As director of transportation, what are your general duties? A. Basically in charge of over-the-road transportation.

Q. Would you explain that a little bit more? What comes under that? A. Well, moving the freight across the country, the terminals. My responsibility is to get it moving after it is loaded.

Q. Would you have within your job duties any duty that relates to securing improved equipment for your company and arranging for more efficient operations to reduce the total miles you have to operate to serve the public? A. Yes. I am responsible for short-route authorities, change of operations, and somewhat in the equipment we purchase.

Q. Have you been advised generally as to the nature of this lawsuit? **[646]** A. Yes, sir.

Q. And have you been advised that there is a position here of the company that there have been reductions in miles operated and in the efficiency of equipment? A. Yes, sir.

Q. Have you made a study of certain factors that have resulted in reducing the total number of miles operated by your company? A. Yes, I have.

Mr. Fenton: Excuse me. Your second to last question, Mr. Schuler, did you say a reduction in total number of miles operated and the efficiency of the equipment?

The Court: That's what he said.

Mr. Schuler: And in the efficiency.

The Court: Reduction in the efficiency.

Mr. Schuler: No, I did not mean to say that. If I said that, I misstated.

The Court: That's what I understood it to be. Maybe we better go back over it and clear it up. I think Counsel's inquiry is well taken.

Q. (By Mr. Schuler) All right. Are you aware that there is a position that is taken by the company here that there have been efficiencies in the operations of the company based upon reducing the total miles operated in serving customers and in the efficiencies in providing newer and better equipment to **[647]** operate over more direct interstate highways? A. (By the witness) Yes, we are in certain instances here hauling more freight with fewer miles.

Q. All right. Now, you have indicated you have made a study of this. Can you tell us of any efficiencies that have resulted from new grants or authority from the Interstate Commerce Commission, which give you more direct routes? A. Yes, sir, I have several. These are alternate authorities issued by the ICC as supplements to our Master Certificate.

Sub 81 in March of 1965 was a route between Atlanta and El Paso. Previously we had to run our freight to Atlanta to Nashville, Oklahoma City, Lubbock and El Paso. This gave us a direct route through Dallas. It saves 421 miles per round trip, and based on the number of schedules we ran in 1971, eleven hundred ten schedules, and the saving would have been approximately four hundred sixty-seven thousand miles on this route.

Q. Mr. Anderson, the reporter has to take this down and you are giving a lot of figures, so would you please slow down just a little bit so the reporter can get it.

The Court: Let me ask, you are not entitled to serve anything intermediately between Atlanta and El Paso when you go through?

A. (By the witness) This is a closed-door authority, that's **[648]** right. We have a terminal at Dallas, but on this route we cannot serve it.

The Court: You just load the truck at Atlanta and go straight through and don't pick up or deliver.

A. (By the witness) That's right.

Mr. Schuler: Your Honor, that's true on this particular operation, but generally a carrier such as this is authorized to serve all intermediate points.

The Court: But on this one particularly, I thought that was what he was talking about. I wanted to make sure.

Mr. Schuler: That's right.

Q. (By Mr. Schuler) Please continue. A. (By the witness) Sub 78, September, 1966, gave us a direct authority between Kansas City and St. Louis. Prior to this we had to run our freight from Kansas City to Springfield to St. Louis, south and back north again. This amounts to a saving of a hundred and thirty miles each round trip. In 1971 we ran twelve hundred

twenty-six schedules across this route with an approximate saving of a hundred and fifty-nine thousand miles.

Sub 86 in September of 1966 between Oklahoma City and Phoenix is another sleeper route. Prior to this change we had to run our freight again from Oklahoma City through Lubbock, to El Paso to Phoenix. Now, we run direct over the Highway 66, **[649]** drop down through here and it's a saving of two hundred and eighty-eight miles round trip. We ran twelve hundred eighty-six runs over this route in 1971 for an approximate saving of three hundred seventy-thousand miles.

Sub 89, March, 1967, between Chicago and St. Louis. Prior to the change, prior to the authority, we had to run our freight from Chicago to Evansville, back to St. Louis, or to Chicago, Evansville, to Memphis, to Oklahoma City, and this gave us a direct route from Chicago to St. Louis, three hundred and forty-six round-trip miles saved. We ran fourteen hundred ninety-four schedules over this route in 1971, with approximately five hundred seventeen thousand miles saved.

Sub 96 in July of 1968 between Atlanta and Memphis. Prior to the authority we had to run our freight again from Atlanta, Nashville, to Memphis. This runs direct through Alabama, Mississippi for a hundred and twenty-six miles saved each round trip. In 1971 we ran twenty-two hundred ninety-nine schedules over this route for an approximate saving of two hundred ninety-thousand miles.

Q. Now, would you stop right there, Mr. Anderson, and add up approximately, if you will, the savings in mileage in 1971 from those five changes of operations resulting from Interstate Commerce Commission approval of alternate routes. A. Okay. I'll have to add them up with a pencil. I can't do it in my head. **[650]** Approximately a million eight hundred four thousand miles.

Q. Are there some other changes that you can summarize briefly for us resulting from ICC approvals? A. Yes. We have

Sub 118, November, 1970, between Oklahoma City and San Francisco, and we haven't obtained the change of operation to actually put this one in effect yet, but this gives us a hundred and seventy miles round trip on each schedule saving.

Sub 119, January, 1971, between Denver and Portland. Prior to the authority, we had to run our freight from Denver to Seattle and back south to Portland. This gives us a direct route. We have five hundred and twenty-four mile round trip saving. We ran a thousand seventy-one schedules over that route in 1971 for another five hundred sixty-one thousand miles saved.

Sub 121, June, 1971, between Denver and San Leandro. Again, we have not obtained a change of operations to put this one in effect, but the mileage saving will be four hundred ninety-six miles approximately each round trip when we do put it into effect.

Q. Now, have there been other changes of operations resulting from things, other matters than ICC approval of alternates? A. Yes, sir. We have several changes of authority or change of operations, change of operations over presently **[651]** existing authorities. The first one major proportion was in July, 1967, we had a sleeper operation between Oklahoma City and Los Angeles and they were running twenty-four schedules a week, four a day, six days a week, and in July of 1967 we added schedules to run six a day seven days a week. In other words, forty-two schedules a week. The additional schedules in 1971 would have amounted there to two hundred ninety thousand miles saved. It is a three hundred and ten mile round trip saving.

Again, prior to putting these into effect, the freight had to come down through Lubbock, El Paso, Phoenix and Los Angeles. This is over the old Highway 66 operation, direct across.

In August, 1966, we obtained a change of operations between Nashville and Memphis. Prior to the interstate opening

there, it was too far to turn all the way, Nashville through Memphis and back and we had drivers from both ends going out and meeting in the middle at Huntington, Tennessee. This change allowed us to run from Nashville and Memphis, return to Nashville. Each schedule was pulled by one driver.

Q. Now, as I understand that change, you started utilizing an interstate highway. A. Correct.

Q. Which saved you some miles there, is that correct? A. Yes.

[652] Q. You also switched from a two-driver operation to a one driver operation? A. Right, one driver per schedule.

Q. All right. Continue, please. A. In April, 1968, we made a similar change between Winchester, Virginia and Philadelphia. Prior to the change the driver would run through Winchester to Philadelphia and go to bed. There was too many hours. He couldn't turn it. New highways—I'm not sure, I don't believe they were interstates over there, just improved highways, allowed us to turn from Winchester to Philadelphia and back to Winchester, so the driver can now make five trips a week instead of two and a half or three that he was making prior to the change.

In April, 1968, we changed our entire operation between Winchester, Virginia and Nashville, Tennessee. Prior to this time we had layover points where the driver would go to bed at Bristol, Virginia, Chattanooga, Tennessee, Nashville and Winchester. We have one layover point at Knoxville, Tennessee now. Of course, the elimination of layover points results in a decrease of numbers of drivers needed to handle that movement of the freight.

In April of 1968, Chicago to the East Coast, including all the intermediate terminals, Cleveland, Buffalo, Albany, so forth, was changed from a single trailer operation to a double forty operation.

[653] Q. What do you mean by double forty operation? A. Pull two trailers with one tractor, two forty trailers with one tractor. Through this area we pull short doubles. The forty doubles are allowed only on the turnpikes, the Indiana Toll Road, the Ohio Turnpike, New York Throughway and Massachusetts Turnpike. So of course, now, we are in effect reducing the drivers by approximately half by pulling twice as many trailers with one tractor.

In September, 1969, probably the most important change of all was our T.I.M.E.-DC change of operation as a result of the merger, and this gave us the right to intermix the freight from the three companies at all points where we had more than one terminal and run it then in one trailer and over the shortest authorized route, and I have no estimate on miles there saving, but it was a major change.

Of course, prior to the change of operations, well, we had to run the freight exactly as it was prior to the merger. The old T.I.M.E. Freight from Boston to Los Angeles ran through Winchester, Virginia over to Nashville, and the L.A. freight from the Boston terminal of the DC operation ran through Chicago. We took the shortest route after this change and put all the freight over the shortest route, and in January of 1972, back to Chicago, the East Coast again, the one I just described as changing to a double forty operation in 1968, in January of '72 we changed that from a sleeper operation to a **[654]** single man operation, so we are still running double forty equipment, and we are now pulling with one driver instead of two drivers in each tractor.

And in February of 1972 we changed the entire West Coast north-south operation, which prior to the change was approximately 50-50 sleepers, fifty percent sleepers and fifty percent single man, and it's now a hundred percent single man operation, and again using one man per tractor instead of two.

And in the same change of operation, February, 1972, we changed our operations between Phoenix and El Paso and Lubbock. Prior to that time we had a layover at Lordsburg, and at El Paso, Texas, and we eliminated both layover points. We now meet in the middle. There is no layover involved, which in effect, reduces the need for drivers.

Q. All right. Have there been changes of a miscellaneous nature that have resulted in reduction of miles operated? A. Yes, sir. In February—excuse me. In August of 1971, they operated a little piece of interstate over in Utah and made an authority we already had and had operated in the past between Denver and Los Angeles a practical route. Prior to that there were mountains and things and we just didn't feel it was safe to run the route. We started running that route and it saves us a hundred and fifty-nine miles round trip. We ran eight hundred seventy schedules over that route in 1971, which would amount to a hundred and thirty-eight thousand miles **[655]** on that particular route.

In early 1971 we changed Kansas City—Dallas, Kansas City and Oklahoma City. Schedules prior to the change, a Tulsa driver and a Kansas City driver would run at the same time and meet at Chanute, Kansas, and the Oklahoma City would end in Tulsa, and Tulsa put on another driver to run it to Oklahoma City, or to run it to Dallas. After the change we started meeting at Coffeyville, Kansas. The Kansas City driver ran a little further. The Tulsa driver now runs and meets at Coffeyville and instead of going back to Tulsa he goes to Dallas, and eliminates one driver in each schedule is what I'm trying to say.

Q. All right. Are there any others? Have you had any in the past few months? A. No. That would be the last one with the—we had two major changes I have already described this year.

Q. Now, have you made any tabulations as of March of this years as to the total miles operated by sleeper operations compared to single man operations to show the reduction in sleeper operations? A. Yes, sir. I compared March miles as they ran

compared with how they would have been—the miles we would have had sleeper versus single man had we not made the changes I have already described. This year from Chicago east and the West Coast operation we decreased the sleeper miles by a million **[656]** three hundred forty-five thousand miles in one month by those two changes.

Q. And it was on just the two long runs, I believe you said. Which runs were those? A. Chicago to the East Coast, Boston, New York and the Los Angeles to Seattle on the West Coast.

Q. Is there any way you have of estimating the decrease in man hours, or the decrease in total drivers used during that one-month period? A. No, sir, I didn't make any survey on that at all. I get involved in drivers only during a change of operations when we decide how many we should move to different points.

Q. Now, you have given us these various types of changes that have occurred from 1965 to the present due to ICC grants, due to internal changes of operations, putting in relay operations instead of two-men sleeper operations. Has this had the effect of reducing the total number of road drivers used, or increasing the total number of road drivers used? A. Well, it would decrease the number of drivers used for the same amount of freight. Now, I didn't—again, didn't make any survey as to how we compare tonnage-wise now with the past, but for the same amount of freight we are certainly using fewer drivers than we would have prior to the changes.

Q. Have you made a similar study as to the equipment used by your company from 1967 to the present? **[657]** A. Yes, I have.

Q. Would you tell us what you found? A. Of course, the trend in the equipment over the years is lighter trailers, higher cubes and fewer double schedules—I mean more double schedules and fewer single.

Q. When you say higher cubes, are you talking about cubic footage? A. Cubic capacity of trailer, loading capacity, right. I

made a couple of notes here of some 1964 trailers we still have on our fleet. Well, first of all, in 1967 we had some twenty-four-foot trailers, a hundred and eighty nine twenty-four-foot trailers still on the fleet. Now, of course, we have no twenty-four foot trailers at all. In 1964, short double or pup, as we call them, one series we still have in our fleet, has seventeen hundred twenty cubic feet of loading capacity, and it weighs approximately seventy-two hundred forty pounds, and the 1971 model has nineteen hundred forty-six cubic feet, over two hundred more, weighs only fifty-nine hundred pounds, so the trailers are getting bigger and lighter.

Q. When you stated a short double, does that mean two trailers that are hauled together behind a tractor? A. Yes, sir.

Q. And you refer to either of the shorter trailers as a pup? A. Right.

[658] Q. All right. A. And they are still restricted in the south, but we can run them all the way from Los Angeles to Chicago without restriction, and from Chicago east over the turnpikes.

I made a similar note on the forty-foot trailer, a 1962 model, forty-foot trailer still in the fleet, twenty-four hundred fifty-four cubic feet of loading capacity, eleven thousand three hundred twenty pounds, and a 1971 forty-five foot trailer, which we are now running, five-foot longer, three thousand seventy-nine cubic feet, weighs only ten thousand four hundred twenty-five pounds. Almost a thousand pounds lighter, approximately, and four hundred additional cubic foot loading capacity.

As far as the number of trailers in the fleet, in December, 1967, T.I.M.E. Freight—I don't have the combined list for this date, but we had fourteen hundred twenty-one schedules of line equipment, six percent of those were doubles schedules, and at the time of the merger in December, 1967, we had twenty-eight hundred forty-six schedules of equipment, sixteen, approximately sixteen percent of them were doubles schedules.

In the present fleet we have three thousand eighty-eight schedules of equipment, and twenty-two and a half percent of those are doubles schedules, and we have on order now, our fleet will change this year, we will retain three thousand **[659]** eighty-eight schedules of equipment, but our schedules of doubles will increase to thirty-one percent. So since 1967, six percent and now thirty-one percent on the doubles schedules. Of course, the cube is—I don't have the note of the cube, but terrific increase in cube.

Q. Again, I would ask you if the increase in the use of double trailers hooked together and the increase in the capacity of those trailers, and a reduction in the weight of those trailers results ultimately in a usage of more or less drivers to handle the freight? A. Definitely fewer drivers to move the same amount of freight.

Mr. Schuler: Thank you. I have no further questions.

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[661] STEPHEN SYDEBOTHAM,

called as a witness at the instance of the defendant, T.I.M.E.-DC, having been first duly sworn, was examined and testified **[662]** as follows:

Direct Examination

By Mr. Hunter

Q. Would you please state your name for the record? A. Stephen Sydebotham.

Q. What is your current business address? A. Post Office Box 2550, Lubbock, Texas.

Q. Who is your current employer? A. T.I.M.E.-DC, incorporated.

Q. What is your present position with T.I.M.E.-DC? A. Director of Claims and Safety.

Q. What are the duties encompassed with the position of Director of Claims and Safety? A. Well, in my position with the company, we have to direct the activities of field personnel as well as the drivers in the manner of training, advice, and counseling, as well as through our personnel department, the minimum requirements by the regulatory bodies, and the Department of Transportation, of employment and so forth.

Q. What role does your department play in the screening of applicants for road driver positions? A. Well, after the personnel employment folder is received and all the papers are submitted, they are given further screening about our department for physical qualifications and make certain that all the requirements of the Department of **[663]** Transportation are met.

Q. I see. As Director of Claims and Safety, do you have personal knowledge as to the performance of T.I.M.E.-DC in the area of accident prevention? A. Yes, I do.

Q. What is the nature of that knowledge? A. In 1968 at the National Safety Truck Contest, our predecessor, or DC International, won first place in this contest, and T.I.M.E. Freight won second place.

Q. What is the criteria used to establish the various positions in this contest? A. It is established by the number of miles driven and the number of accidents related to a million miles driven.

Q. I see. What occurred after 1968? A. In 1969, under the merged company, T.I.M.E.-DC, Incorporated won first place in this category, which is in excess of one hundred million miles driven.

I might add that this encompasses such motor carriers as Roadway Express, PIE, Transcon, Yellow Freight, etc.

Q. Are these the largest carriers in the industry, is that correct? A. Yes, that's correct.

Q. Do you remember the performance of T.I.M.E.-DC that year in terms of—— A. I believe that was 2.5.

[664] Q. What happened the following year? A. In 1971?

Q. 1970, I believe. A. 1970 we won first place that year.

Q. Do you know your frequency that year? A. 2.6.

Q. 1971. A. We won first place again.

Q. I see. To the best of your knowledge, has any carrier in that category ever succeeded in winning three years in a row? A. Not to the best of my knowledge, no, sir.

Q. As director of claims and safety, do you have any personal knowledge as to the relative performance of city drivers transferring to the road? A. Yes, I do.

Q. I submit to you a document which was earlier identified as Defendant's Exhibit LLL. Are you familiar with that docket? A. Yes, I am.

Q. In what manner are you familiar with that document? A. This was constructed under my direction as to the activities of what had transpired at Memphis, Tennessee.

Q. Okay. What was the occasion for that Memphis study? A. Well, we had noted that we had a number of accidents we couldn't really account for, so a study was conducted, but in **[665]** April of 1969, city drivers, with the agreement with the local union, and T.I.M.E.-DC, reached an agreement that they would be permitted to exercise the option and drive over the road.

Q. This had not happened before? A. No, sir.

Q. What happened in 1969? A. The year 1969 we had a total accident of Memphis-based drivers of twenty-eight.

Q. Are these line haul? A. Yes, this is over-the-road line haul accidents. Of this, twelve of fifteen people which were the city driver transferees, contributed of the twenty-eight and the regular line haul drivers contributed sixteen of the accidents, of which they were seventy-seven.

The Court: There were fifteen transferees, is that correct?

A. (By the witness) Yes, sir, that's correct.

Q. (By Mr. Hunter) This is from—— A. (By the witness) That is from April.

Q. The total number of accidents in 1969 are from January to December? A. That is correct for the entire year.

Q. When did the city drivers transfer to the road? A. April of 1969.

Q. I see. Now, what happened in 1970? **[666]** A. In 1970 we had a total line haul accident of thirty-three. The city driver transferees got twenty-four of the thirty-three. They comprised twenty-five of the list of over-the-road drivers, or regular drivers contributed nine of the accidents, of which there were eighty-three.

Q. I see. In 1971? A. We had a total line haul accident of twenty-four, city transferees contributed ten of the twenty-four, of which there were thirty-two of the city drivers at that time, regular drivers contributed fourteen of a number of seventy-six.

The Court: That is seventy-six regular drivers?

A. (By the witness) That is correct, sir.

The Court: Thirty-two are the transferees?

A. (By the witness) That's correct.

The Court: Would that be the same person or were there thirty-two different persons? Could that be one man transferring thirty-two times or a combination of it?

A. (By the witness) No. This was a total number of transferees. Obviously, Your Honor, all of the drivers did not have accidents, but——

The Court: All of them did not have what?

A. (By the witness) Accidents is what I'm saying, but they did contribute that total number.

The Court: Develop, Counsel, how they **[667]** transferred. Was it just for one trip or did they transfer permanently?

Q. (By Mr. Hunter) Mr. Sydebotham, advise the Court as to the method by which transfers were accomplished in Memphis. A. (By the witness) Through the local agreement they were allowed to actually sign a resignation, but still keeping their company seniority, and then they were allowed to then bid on any open over-the-road driving, and that's how it was accomplished.

The Court: Well, when they bid, what seniority date did they have?

A. (By the witness) I can't personally answer that.

Mr. Wells: If Your Honor please, there is a stipulation about that. They maintained their company seniority for the purposes of vacations and pensions and fringe benefits. They obtained their seniority in the road unit as of the dates of the entry into the road unit.

The Court: The date they got their first job?

Mr. Wells: Yes, sir, in the road unit.

Mr. Hunter: Again, Your Honor, to make it perfectly clear. These transferees refer to city drivers who were allowed to transfer to regular full-time road driver positions.

The Court: They went over to full time.

[668] Mr. Hunter: That's right. They were not casuals.

The Court: Under the method Mr. Wells just described.

Mr. Wells: Right. They became regular line haul drivers.

The Court: All right. Well, does that mean when a man would transfer, did you have a total of a hundred and eight drivers on line in 1971 out of Memphis?

A. (By the witness) Yes, sir, that's correct.

The Court: A hundred and eight?

A. (By the witness) Yes, sir.

The Court: Thirty-two of them were transferees to a regular position out of the city and seventy-six were already there, or came in by new employees.

A. (By the witness) Yes, sir, that's correct.

Mr. Hunter: I have no further questions at this time.

Cross-Examination

By Mr. Fenton

Q. Mr. Sydebotham, you have Defendants' Exhibit LLL before you? A. Yes, sir, I do.

Q. Was this exhibit actually put together by you, or by **[669]** someone else? A. By the manager of safety and by the manager of personnel under my direction.

Q. That is by someone else, is that correct? A. That is correct.

Q. Does this exhibit show the kind of accidents that these individuals were involved in? A. No, it does not.

Q. Does it show whether individual drivers were responsible for these accidents? A. No, it does not.

Q. Does it show whether the accidents were chargeable or non-chargeable? A. It does not.

Q. Does it include both, or do you know? A. Yes, sir, it is all inclusive.

Q. Does it show the amount of property damage which was involved in these accidents? A. No, sir.

Q. Does it show the accidents which each individual driver was involved in? A. No, sir.

Q. Now, you have grouped, I take it, all of your regular line drivers in Memphis into this summary, is that correct? A. That's correct.

[670] Q. For the years shown. A. Yes.

Q. Did you do any breakdown to determine whether or not line drivers who just started their employment with the company were involved in any more accidents than those that had worked there, say, five years, or longer? A. No, sir, I did not.

Q. It is true, of course, that the transferring city drivers were beginning their line driver employment, isn't it? A. Yes, sir.

The Court: That brings up this question: You had twelve transferees in 1969. Those twelve will be in the eighty-three for 1970, would they not, or would they be in the twenty-four transferees?

A. (By the witness) No, they are still——

Mr. Schuler: Your Honor, pardon me, but I believe you have transposed one of the columns.

The Court: Yes, sir. I'm talking about fifteen. You got fifteen transferees. What do you do in 1969? Where are they carried in the 1970 figure?

A. (By the witness) They are still carried as a city driver transferee.

Q. (By Mr. Fenton) Now, are you aware, Mr. Sydebotham, that many more white city drivers transferred to the road than of black in Memphis, and let me ask you if this figure **[671]** sounds approximately correct to you, and this is compiled from Plaintiff's Exhibit 171, that as of the date of that seniority

roster, June 30th, 1971, that twenty-eight whites and three blacks had transferred from the city to the road.

Mr. Schuler: Your Honor, I don't think the foundation for that question is accurate. This exhibit does not show that more whites transferred to the road than blacks.

The Court: Well, I think he was referring to another exhibit, were you not?

Mr. Fenton: I am referring to Exhibit 171.

Mr. Schuler: Also, this witness does not have knowledge of that other exhibit.

The Court: Is this other exhibit in evidence? If it is, show it to him and see if he can answer the question on the basis of the information contained therein.

Do you have any study made of what the transferees do in their second year of road haul work?

A. (By the witness) I do not have it broken down. However, we could obtain it. We do have all the records.

Q. (By Mr. Fenton) Referring again to Exhibit LLL, do you know the race of the individual drivers involved in that exhibit? A. (By the witness) No, sir, I don't.

[672] Q. All right. I now hand you what has been marked earlier as Plaintiff's Exhibit 171, Mr. Sydebotham, and refer you to the line driver seniority roster in this exhibit, which starts about midway in the exhibit and is dated June 24th, 1971, and starting with the person who holds Number 75 on that roster, Mr. Wilbanks, do you see that? A. Yes, I do.

Q. Now, from that point on——

The Court: From that point on, you mean subsequent to that date or before that date, now?

Mr. Fenton: Starting with Mr. Wilbanks, from that point on, there are a number of road drivers who have a different

seniority date listed for vacation purposes than they have for their line drivers seniority date.

Q. (By Mr. Fenton) Is that correct, Mr. Sydebotham? A. (By the witness) Yes.

Q. Are you aware that all of those that have those two different dates are transferees from the city to the road? A. I would just have to presume as such.

Q. All right. Assuming that that is true, now, can you go through and count them or you can accept my statistics. I count a total of twenty-eight whites and three blacks who have so transferred. Perhaps you could glance through there and see if you agree with those statistics. A. Well, I would have no knowledge whether they are white **[673]** or black.

Q. The N indicated black, Mr. Sydebotham. A. Yes, sir. I will agree with your statistics.

Q. All right. So we agree, do we not, that many more whites have transferred from the city to the road there than have blacks. A. Yes, sir.

Q. Now, did you do any breakdown to determine who were involved in the most accidents, the whites or the blacks? A. No, sir.

Q. Of the transferees? A. No, sir.

Q. Mr. Sydebotham, are you aware that at other terminals of the company that city drivers have transferred to the line? A. I do not have such knowledge. This is the only one that I am aware of.

Q. Well, the record shows that this has taken place at the Los Angeles terminal and it has also taken place at least in two instances at the Denver terminal. Have you done any statistical analyses of those transfers?

Mr. Schuler: Your Honor, the foundation is that he has such knowledge. He has already said he doesn't have knowledge.

The Court: Would this mean you haven't made such a study? **[674]** A. (By the witness) I have not made such a study.

The Court: All right.

Mr. Fenton: That's all.

Mr. Wells: No questions.

Mr. Hunter: A couple of questions, Your Honor.

Redirect Examination

By Mr. Hunter

Q. Again, referring, Mr. Sydebotham, to Exhibit LLL. A. Yes.

Q. The severity of the accident is not noted, is that correct? A. That is correct.

Q. That's with regard both to line drivers and city drivers, is that correct? A. That is correct.

Q. Now, whether an accident is chargeable or non-chargeable, is the company responsible for any of the resulting costs? A. In most cases, yes.

Q. So the probable liability of the company has no relationship to whether the driver is charged or not charged for the accident, is that correct? A. Well, that's true to a fashion. On a non-chargeable, **[675]** if somebody else—if it's a clear cut case of liability, there is a possibility of recovery, but other than that, we still have to defray the expenses.

Q. Now, when this chart was prepared under your direction, you gave no instructions as to determining the racial designations of the transferee, did you? A. No, sir.

Q. This chart was intended to illustrate the number of accidents that were caused by city drivers transferring to the road period, is that correct? A. That is correct.

Mr. Hunter: No further questions.

Recross-Examination

By Mr. Fenton

Q. Mr. Sydebotham, if the company feels that its driver is not responsible for an accident in which another party is involved, doesn't it use every effort to keep from paying any claim with respect to that accident? A. Absolutely.

Mr. Fenton: That's all I have.

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[676] CHARLES F. HUTCHINSON,

called as a witness at the instance of the defendant, T.I.M.E.-DC, having been first duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Schuler

Q. Would you state your full name for the record? **[677]** A. Charles F. Hutchinson.

Q. What is your address, Mr. Hutchinson? A. Post Office Box 2550, Lubbock, Texas.

Q. With what company are you associated and what is your position? A. I am personnel manager with T.I.M.E.-DC.

Q. How long have you been personnel manager, Mr. Hutchinson? A. Nearly two years.

Q. And what is your background in transportation prior to the two years as personnel manager of T.I.M.E.-DC? A. They go back nearly ten years to June of '62. I guess that's ten years. I was with another motor carrier for eight years, four years of which I was payroll supervisor, a year of which I was a dock foreman-dispatcher, a year of which I was a line driver supervisor and safety supervisor, and two years of which as personnel manager.

Q. Would you tell us what the general scope of your duties is as personnel manager? A. To recommend policies in lieu of our purpose of maintaining the human resource and in line with government and contractural constraints; to implement them after approval and to administer them.

Q. In this regard, do you have dealings with the area or regional representatives of your company that have been previously mentioned by Mr. Wilkins, the president of the **[678]**

company? A. Yes. I have a staff relationship with the regional directors and the terminal managers, if you will.

Q. And in the time that you have been in this position, have you particularly directed your efforts in dealing with the terminals and the regional representatives of your company to the field of hiring and employment of minority applicants? A. Yes, that is my primary duty.

Q. Were you present in most or all of the deposition that have been taken in this case? A. Yes, sir, I was.

Q. Have you prepared a series of documents that have been previously identified and accepted as exhibits here, commencing with Exhibit TT? A. Yes, sir, I have.

Q. I'd like to give you a copy of Exhibit TT and before we go into that, were these exhibits all prepared by you or under your supervision? A. Yes, sir, they were.

Q. Were they all prepared from company records and from sources of statistics such as the United States Census Bureau and other sources that have been made available to the plaintiffs? A. Yes, sir.

Q. All right. Would you explain how you prepared Exhibit **[679]** TT and the purpose of it? A. Well, Exhibit TT was prepared from T.I.M.E.-DC's and its predecessor's equal employment opportunity report, the EEO-1 as it is commonly known, this report. We have used percentages and absolutes. To be statistically sound, you must do this. And these are meant to show the decrease in the total employees of T.I.M.E.-DC and its predecessor companies in 1967 through the last report, which was March of 1972, and the corresponding increase in minority, Negro and Spanish surnamed employment.

For example, in Table 1, in 1967 T.I.M.E.-DC and LASME had some seven thousand two hundred thirty-eight employees. It's decreased to, in 1972, to six thousand four hundred twenty-four.

Mr. Fenton: Excuse me. What exhibit are you referring to?

A. (By the witness) TT.

The Court: TT.

Mr. Fenton: What table?

A. (By the witness) Table 1.

Mr. Fenton: I guess I don't have that table on my exhibit.

A. (By the witness) It may be out of order.

Q. (By Mr. Schuler) Would you compare the exhibit of Mr. Fenton and tell us if he has all the pages there or not. **[680]** A. (By the witness) He has another exhibit.

Mr. Schuler: Your Honor, in our off-the-record discussion, we had lettered our exhibits approximately a month ago, and then we relettered them and I think Mr. Fenton had before him now the previously lettered TT.

The Court: All right. Does he have the one that the witness is testifying about, now?

Mr. Schuler: Well, if he doesn't have it among his other papers, we will give him a copy of it.

The Court: Well, let's see he's going to need something to follow this testimony with.

Do you have it, Mr. Wells, where he could look over your shoulder?

Mr. Wells: Yes, sir.

The Court: Why don't you step over there and follow it there. That would be the best way. I can see where you will need it to follow this testimony.

Mr. Schuler: I apologize for this, Your Honor. I think we gave the copies to Mr. Fenton, but we will make another copy available.

A. (By the witness) Okay. Table 1, total employees shows a percentage decrease of 11.2 percent. In Table 1(a), it shows an absolute decrease of eight hundred fourteen employees over this six-year span.

During that same period the total employment, minority **[681]** employment at T.I.M.E.-DC increased from five hundred twelve to six hundred seventy-seven. This is an absolute employee increase of a hundred and sixty-five employees.

Negro employment increased from two hundred forty-five to three hundred fifty-six. Percentage increase of 45.3; absolute increase of one hundred eleven.

Spanish surnamed employment from 1967 to 1972 showed a percentage increase of 16.7 and an absolute increase of thirty-eight people.

Chart 1 illustrates graphically the percentage of increase and decrease in total employment, minority group employment.

Mr. Wells: Just a moment. Where are you, now, please, sir?

A. (By the witness) Chart 1.

Mr. Wells: Chart 1?

The Court: Chart 1 and 2 just reflect what is on Table 1 and 2, do they not, except in graphic form?

A. (By the witness) Yes, sir, graphic form.

Mr. Wells: Thank you.

Q. (By Mr. Schuler) Does Chart 1 reflect the findings on Table—— A. (By the witness) Chart 1 corresponds to Table 1. Chart 1(a) corresponds to Table 1(a).

Q. All right. Would you tell us briefly the additional **[682]** information that is found on Table 1(a), or have you already given that? A. I have already given that.

Q. All right. So that by looking at the charts, you can tell the graphic relation of the figures that you have just told us about. A. Yes, sir.

Q. Now, in this regard, were you present yesterday when Mr. Wilkins indicated that since the mergers there had been a decline in gross revenue and in profits? A. Yes, sir.

Q. And were you present also when he indicated that it is not only a hope but a requirement that the company increase its business in the future. A. Yes, sir. He has expressed that requirement.

Q. Now, relating that to the number of employees, what is your expectation as to whether in the future the total number of employees of the company will increase or decrease? A. Well, if you will note on there, our sharp decline in total employment has leveled off in 1970. I believe this will correspond to our revenues, and we can expect as our revenues increase, and as they are required to increase, that our employment will also increase.

Q. What is your position as personnel manager as to whether in the future there will be a continued increase in the hiring **[683]** of minority employees, as there has been in the past? A. As personnel manager, I will be assured of it.

The Court: You would be——

A. (By the witness) Assured that it will be an increase, yes, sir.

Q. (By Mr. Schuler) Now, we refer to Exhibit UU, and tell us how you prepared it and what it is designed to show. A. (By the witness) This shows basically the same information as the first. A percentage and an absolute increase in total minority group employment at the terminals where we took depositions this summer.

The Court: Same information as on the previous exhibit except it is limited to these ten terminals? A. (By the witness) Yes.

Q. (By Mr. Schuler) Is it intended to pinpoint the exact termination where the plaintiffs took depositions? A. (By the witness) As a group, yes, sir.

Q. And are the findings on that based on your statistics generally the same as on TT; that is, you have had an increase in the number of minorities, both in percentage and absolute number, and a decrease in your total personnel. A. Yes, sir. Chart 7 and 7(a) illustrates that quite graphically.

Q. All right. I'd like to refer you now to Exhibit VV, minorities as a percentage of total employees as of December 3rd, **[684]** 1971. Would you explain that chart, please? A. Well, this is first of all part of our internal controls, and a way that we check our progress, and we prepared the quarterly—of course, this is the last quarter we have prepared. The heading of the column on top shows minorities as a percent of population from the general population characteristics, 1970, from the Census Bureau, and the 1963 subreport, persons of Spanish surnamed——

The Court: Excuse me. We're talking nationwide now?

A. (By the witness) Yes, sir, yes, sir.

Mr. Wells: If Your Honor please, I didn't hear which exhibit we are on, now.

Mr. Schuler: We are on VV.

The Court: VV as in Victor.

Mr. Wells: Thank you.

A. (By the witness) What we did to arrive at this percentage of T.I.M.E.-DC's universe, if not the whole United States, but T.I.M.E.-DC's universe, is take the standard metropolitan statistical areas of the cities in which we do business, total population, and compute the Negro and the other minority percentages. The Spanish surnamed figures came from a 1971 Census Bureau Report, or an estimate.

Q. (By Mr. Schuler) In using the SMSA figure, and the Urban Place figure for specifically Spanish surnamed Americans, **[685]** did you do this simply for comparative purpose with the figures of the plaintiff, or did you do it because you acknowledged any correctness as to using SMSA and Urban Place figures? A. (By the witness) Well, we feel that SMSA figures should be used. There are many variables why it should be used. Depends on where our terminal might be located, where the minority community may be located. In other words, where do we draw our employees from, so the SMSA figures were used. It's not meant to be a comparison or a contrast in any way with the government's figures, but it is primarily—this is our terminal controls.

Q. Did you use the SMSA figures because they were apparently the only ones available to you? A. Yes, sir.

Q. Do you believe, or do you know whether they are correct when these other factors are taken into consideration that you've mentioned, such as distance of minority groups from the terminal? A. No, sir, I have no way of knowing whether they are correct. There are many other variables, of course, too.

Q. All right. Would you continue your explanation of Exhibit VV? A. Well, it is broken down by job class in the system, and for our three major operating regions. Also, for the—and it shows that T.I.M.E.-DC had six thousand four hundred sixty **[686]** employees at this point in time, December 31st, 1971.

Q. Let me stop you right there, Mr. Hutchinson. Mr. Wilkins gave figures yesterday that showed a slightly lesser number of employees as of 1971. Can you justify the difference in the two sets of figures? A. Yes. I believe Mr. Wilkins showed about six thousand. We show about sixty-four hundred here. The difference is Mr. Wilkins' source was the ICC financial report, and that requires that you report just those employees who are actively working at that particular point in time. Our figures here include all those employees to whom we have obligations. The

four or five hundred difference here is made up of people on layoff, people on sick leave, industrial leave, personal leave, that sort of thing.

The Court: Well, now, these figures also vary from Exhibit TT slightly. I don't think it's anything material.

A. (By the witness) TT, Your Honor, was March 31st.

Mr. Schuler: Of what year?

A. (By the witness) '72. And this was December 31, '71.

The Court: That would explain the slight difference. All right. Thank you.

A. (By the witness) Yes, sir.

Q. (By Mr. Schuler) Would you continue with your explanation of Exhibit VV, please, or have you completed it? **[687]** A. (By the witness) Well, the figures speak for themselves.

Q. All right. Let me show you a copy of——

The Court: Let me ask, before we leave that now, the minorities is the percent of the population, thirteen and three-tenths percent Negro.

A. (By the witness) Yes, sir.

The Court: That is the nation as a whole, and that was the population of the nation as a whole.

A. (By the witness) Sir, that is T.I.M.E.-DC universe, if you will. That is those cities where we do business.

The Court: It is the metropolitan area of those cities where you do business.

A. (By the witness) Yes, sir.

The Court: Not the entire——

A. (By the witness) No, sir.

The Court: All right. Thank you.

Q. (By Mr. Schuler) Would you refer to Exhibit WW—Well, before we go to that, I want to draw your attention to the figure in Exhibit VV under the system figures, and the financial figure down in the lower right-hand corner shows total minority of six hundred seventy people, and 10.4 percent of work force. A. (By the witness) Yes, sir.

Q. Is there another exhibit that shows how that percentage of work force represented by minority employees has increased over the last few years? **[688]** A. Yes, sir.

Q. Is that in a later exhibit? A. Yes, sir.

Q. Now, will you turn to Exhibit WW and explain how that varies from the previous exhibit? A. Again, this is one of our internal controls for checking our progress, and this exhibit illustrates the total hires during 1971. Let me qualify total. That is not necessarily everybody we hired, but that is everybody that we hired in 1971 that stayed with us through the end of '71, and that indicates again—the top column has the percentage of minorities in T.I.M.E.-DC's population, and the bottom figure indicates that we have hired four hundred seventy-four people this year, eighty-one of whom have been minorities, and we have hired at the rate of 16.9 percent.

Q. All right. And how does that differ from the previous exhibit? A. Well, the previous exhibit was our total number of employees as of December 31.

Q. That was at a given point in time. A. Yes, sir. These are all our hires that have stayed with us during 1971, or 1971 new hires.

Q. All right. And you have included in that exhibit new hires as to the regional areas of your company, have you not? A. Yes, sir.

[689] Q. I also see that you have added hiring figures for two additional locations, the Hammond terminal and the Lubbock general office. Will you please tell us why that was done? A.

Those were added just to make the exhibit cross foot, if you will.

The regional directors have no responsibility for the Hammond special commodities division, or the general office.

Q. The addition of those was to make the total numbers and percentages add up to the total that you have on the first page. A. Yes, sir.

Q. All right. Does Exhibit XX contain the same type of information as Exhibit WW except for casual employees? A. These are the number of casuals that we used during 1971.

Again, this is just casuals who were coded as such in the computer. If a fellow was a casual and went regular, it wouldn't be in here. If a fellow was used casual and terminated, he wouldn't be in here.

Q. Is that figure as to Hammond and Lubbock general offices in order to make the total numbers come out correctly? A. Yes, sir.

Q. Would you tell us on the system figure the total as to casuals employed and the total minority casuals employed during 1971? A. During 1971 we employed three thousand nine hundred **[690]** eighty-nine casuals, seven hundred eighty of these were minorities, which is a ratio of 19.6.

Q. Percent? A. Percent.

Q. All right. I direct your attention now to Exhibit CC, and ask you if this is also casual information for 1971 as to the ten selected terminals where the depositions were taken by the plaintiff? A. Yes, and the general office.

Q. All right. And would you tell us what the percentage of minority hiring has been at those ten selected terminals? A. We will run through this. Atlanta was 15.1 percent; Chicago 10.1; Dallas 8.5; Denver 20 percent, compared to 11.9. Los Angeles, LAX designation, if you will, 44.4 percent; Los Angeles, LOS, 9.1 percent; Memphis 14.8 percent; Nashville 11.3; Oklahoma

City 14.0; San Antonio 75 percent; San Francisco 33.9, and the general office 32.3.

Q. In at least half a dozen of those listings you apparently hired minorities at a higher rate than you would be justified by the SMSA for that community, isn't that true? A. Yes, sir, I expect that is approximately right.

Q. I now show you Exhibit ZZ and ask you if that information was secured by you from the various terminal managers in response to a request by Counsel for the plaintiff? A. Yes, it was.

[691] Q. And what is the general nature of the information in the exhibit? A. These are line driver seniority lists at certain selected terminals, as selected by the opposing counsel, and identify the terminal managers marked by the driver's name, the date and the place from where, or from which the driver came as a result of a change of operations.

Q. When the drivers came in from another place as indicated on the exhibit, do you have any way of telling what type of change of operations was involved, and which resulted in their coming into that new terminal? A. No, I don't.

Q. Could it have been in some cases bumping in under modified seniority? A. Oh, yes, yes, if that was the meaning of your question. In the southern terminals, yes, those people—it does include those modified seniority people.

Q. Can you think of any other types of changes of operations that might have been involved? A. Well, it may have been in Los Angeles where we had the three facilities, LASME, DC and T.I.M.E. They, of course, earlier merged the LASME and the LAX terminal, if you will, and now at this point in time are merging the line board of the LOS and the LAX terminal, or it may have come—I notice there are quite a few 1969 dates which would probably relate **[692]** to the big change at the time of the merger.

These people transferring in for whatever the reason would, of course, have quite an effect on that particular terminal's ability to hire drivers.

Q. To the extent that they transfer in, would this correspondingly reduce the number of openings for new hires? A. Yes, it would.

Q. All right. Thank you. Now, I'll show you a copy of what has been identified as Exhibit AAA, and I will ask you if these are copies of correspondence that have come to your general office in the ordinary course of business. A. Yes. These were from the predecessor and T.I.M.E.-DC company files. I compiled these when I arrived, of course, here some two years ago, and it is part of an audit, if you will, or of necessity to do my duties of the equal opportunity employment program at T.I.M.E.-DC, and these consist of primarily copies of letters to minority referral sources.

Q. Who would have written the letters to the minority referral sources? A. The terminal managers generally.

Also, copies of correspondence with the contract compliance officer, who we saw several of earlier.

Q. Let me specifically direct your attention to the location of Nashville, Tennessee, and I'll ask you if there are examples of correspondence between Mr. Erskin Lytle, the contract **[693]** compliance examiner, and terminal officials at your Nashville terminal. A. Yes, there are.

The Court: Where is that in this book?

Mr. Schuler: That is about two-thirds of the way through the book, Your Honor.

A. (By the witness) I think they are in alphabetical order.

The Court: I've got it.

Q. (By Mr. Schuler) Are there also examples under Nashville of letters that have been written by your terminal people

there to various minority referral sources in that area? A. (By the witness) Yes, that is those under that tab.

Q. There was also a witness from the Atlanta office of the contract compliance office, and I would like you to refer to Exhibit AA and direct your attention specifically as to correspondence from Miss Frances Gaston to the company under date of June 2nd, 1970. A. Yes, that is this letter here, sir.

Q. Are there also letters under the section of Atlanta showing contacts with minority referral sources? A. Yes, that's all of these.

Q. About how many such letters do you see there? A. Oh, twenty-five or thirty.

Q. The next exhibit, Exhibit BBB, did you provide some of **[694]** the underlying material for Professor George in the computations of his charts? A. Yes, I did. I provided much the same material that we have entered here as to the total employment at various facilities, minority employment at various facilities, hiring results at various facilities.

Q. All right. The next exhibit is Exhibit CCC. A. Yes. This goes back to an earlier point. This is Table 3 under here. When you asked how we actually—how the progress has been made since 1967 to 1972, or one there, of our 10.4 total minority percentage in 1967, T.I.M.E.-DC had employed seven —T.I.M.E.DC or its predecessor had employed 7.1 percent minority employment and has increased through the stages, as you can see here, until the 1972 level of 10.5 percent.

Q. How about the—— A. Negroes have gone from 3.4 to 5.5 percent. Spanish surnamed, 3.1 percent to 4.1 percent.

Q. I'll show you Exhibit DDD, and ask you if this has similar information, specifically for the five southwestern states where T.I.M.E.-DC has terminals.

The Court: What are you referring to?

A. (By the witness) The five southwestern states are California,—in this particular report, California, Texas, New Mexico, Colorado and Arizona.

[695] The Court: All right.

A. (By the witness) The reason we chose the five southwestern states, it is the only area in which there are any real definitive statistics available for Spanish surnamed employment from the Spanish surnamed population.

This comes from the Census Bureau, of course, of only 1960 figures. That's part of the problem with comparative statistics.

Q. (By Mr. Schuler) And in that particular area, what has been the percentage increase in your minority employment over the five-year period? A. (By the witness) In 1967 the total minority employment was thirteen percent. In 1972 it increased to 17.7 percent Negro from 5.1 percent to 7.3 percent and Spanish surnamed from 7.2 percent to 9.2 percent.

Q. Have you prepared a slightly different exhibit based upon the terminal facilities in the five southwestern states? A. Yes.

Q. Is that Exhibit EEE? A. Yes. This is essentially the same information, breaks it down by state, if you will. The Table 2, the first page in the Exhibit, is the total population, and the total Spanish surnamed population in those cities in those states where T.I.M.E.-DC has facilities.

The second page, Table 2(a), is a comparison then of **[696]** those percentages from that first page to the Spanish surnamed employed at T.I.M.E.-DC. In other words, in our particular universe, in the fifth column there are 9.9 percent Spanish surnamed of that population and we have employed 9.1 percent.

Q. And in the fifth column would you tell us what the variatons in the percentages, from the lowest to the highest, for those five states. A. From 4.1 percent to 13.2 percent—18.6 percent, pardon me. It's a little far away.

Q. On the second page of that, have you shown by your figures the relationship between the hiring of T.I.M.E.-DC and the available census figures as to the amount of minorities in a particular state? A. Yes. That is the fifth column, the difference column.

Q. And what does it mean when some of the figures there are in brackets? A. In brackets means that in that particular location, or that particular state, we have fewer than the—fewer employees than the Spanish surnamed population.

Q. Well, conversely, does that mean that—I'm not sure I understand that. Explain that again. if you will. A. Okay. In Arizona there 13.2 percent of the population Spanish surnamed. We have employed 4.7 percent. This means we are under that particular state's population by 8.5 percent.

California, the largest state, you will see the total **[697]** population of California is twelve million, which is about three times as great as the other four states put together. We have an excess of 3.3 percent over the California population.

Q. And in the total figures, how much? A. Eight-tenths of a percent.

Q. You are eight-tenths of a percent under what would be expected in that area. A. In those five southwestern states.

Q. All right. Thank you.

Exhibit FFF is one that I will hand to you, and ask you how that shows a different picture as to the utilization of minorities in the southwestern states, and I will ask you to also tell us why you only have four states there and you have five in the other? A. Okay. In New Mexico we have four employees, and it is not a statistically——

The Court: How many employees?

A. (By the witness) Four employees. So it is not really worth the effort to compare a progress there. But in Arizona, now,

this shows the percentage of Spanish surnamed in our employment. It shows how it grew from 1967 to 1972. For instance, in Arizona in 1967 we had no minority employees. In 1972 we had 14.6 percent.

The Court: In 1972, you're talking about March 31st?

[698] A. (By the witness) Yes, sir, March 31st.

California from 17.6 to 21.4; Texas, 13.2 to 17.7.

This would probably explain—you notice the largest difference on the previous exhibit was in Arizona where we were 8.5 percent below the expected, if you would call it that. Considering the start in 1967 of zero, that is very good progress.

Q. (By Mr. Schuler) And you have shown these same figures for all minorities as well as breaking it down by Negroes and Spanish surnamed Americans. A. (By the witness) Yes, sir.

Mr. Schuler: All right. Now, the next three exhibits were marked as GGG, HHH and III. Those are the subjects, Your Honor, of a stipulation that they are admissible as to their authenticity and accuracy, and I don't wish to get into those at this time. They do not relate to this witness.

The Court: All right, sir. Does Counsel intend to offer them later?

Mr. Schuler: Yes, I do.

Mr. Fenton: Okay. I'll wait. I will save my objection.

Q. (By Mr. Schuler) The next exhibit was JJJ, which was introduced by Mr. Henry.

The next exhibit is KKK. Was this exhibit prepared by **[699]** you in the nature of rebuttal to the exhibits prepared by the plaintiff? A. (By the witness) Yes, it was.

Mr. Schuler: That exhibit has been marked, Your Honor, and I believe you have a copy of it.

Q. (By Mr. Schuler) Would you explain——

Mr. Wells: May we go off the record just a moment, Your Honor?

The Court: Yes, sir.

(Discussion off the record between Court and Counsel.)

The Court: All right. We're on JJJ.

Mr. Schuler: Your Honor, that one had been identified by Mr. Henry.

The Court: Yes, sir.

Mr. Schuler: I indicated we have nothing from this witness on that.

The Court: I thought you were going to question this witness about it.

Mr. Schuler: No. The next exhibit we are going to question him on is KKK.

The Court: All right. I've got that up here.

Q. (By Mr. Schuler) Mr. Hutchinson, was that prepared in rebuttal to Exhibit 230 of the plaintiff? A. (By the witness) Yes, it was.

[700] Q. Would you explain what part of the 230 you felt needed rebuttal and how you went about preparing the figures in Exhibit KKK. A. Two thirty, for what purpose, I don't know, but it purports to show the large hourly earnings difference between a foreman or supervisor and a union worker. In 230 the government made one small mistake to start with. They assumed that we were paid twice weekly, and used eighty hours as a basis of computing the foreman's hourly wage. It is actually—we are paid semi-monthly, and on that basis you use 86.6 hours, which reduces it somewhat. So we can follow through the exhibit, the last column is taken from plaintiff's Exhibit 230. The next column to that to the left is the corrected rate for the semi-monthly pay period rate.

Now, they assumed also that foremen and supervisors and everybody else in our business works strictly forty hours. We don't. So you have to, in turn, to get a real valid comparison, reduce it to an effective hourly rate.

From our company records, our cost control report, I believe that's the title, computed the over—or took the overtime ratio of particular job classes, dock, city drivers and office, had worked during the month of March. These are actual ratios, actual hours worked, and of course, they are referring to March 31, also, and then applied that to the union rate and got a total—yes, on the second page, got a total **[701]** average monthly income based on those overtime hours actually worked. For instance, on Chicago, dock, the average dock worker, based on those ratios, made $818.00. In Denver he made nine hundred ninety-seven. In Los Angeles nine hundred sixty-seven and the other Los Angeles facility, nine hundred and eighty-seven, compared there then to the foreman and supervisors' average monthly income.

We then computed, assuming that the dock foreman and the city driver supervisor and office manager will by necessity work the same hours as the dock men, city drivers or office personnel, we used those same hours then to compute his effective hourly rate. In other words, in Chicago, on the third page, a dock foreman made an average weekly wage of $215.93. The union people worked 41.2 hours, and we will assume that he did. That makes his effective hourly rate then $5.24. We went through the whole works this way.

And the second and the third column then accurately compare a union worker and a foreman or supervisor's effective hourly rate. For example, under dock, the union worker's effective hourly rate in Chicago was $4.58 and the foreman's rate, effective hourly rate is $5.24 an hour.

In Denver the union worker's effective hourly rate was $5.10 an hour and the supervisor's effective hourly rate was $4.45 an hour.

Moving down to the city, in Denver the union worker's **[702]** effective hourly rate was $5.11, the supervisor's effective hourly rate was $4.69 an hour.

That's all.

Q. And throughout the exhibit, does KKK in general show that the difference between supervisory pay and the hourly rate of workers is less than what is shown on Plaintiff's Exhibit 230? A. That is unfortunately true.

Q. And in a number of instances your Exhibit KKK also shows that the effective rate of the supervisor is actually less than the hourly rated effective rate? A. That's true.

Q. Now, I would like to direct your attention to Exhibit MMM, entitled to 1971 Earnings of all Driver Employees at Selected Terminals. Was this prepared in the nature of rebuttal to a prior exhibit of the plaintiff, Number 231, comparing city drivers and line driver earnings for ten T.I.M.E.-DC terminals for 1969? A. Yes, it was.

Q. And does this purport to show a more up to date comparison for the year of 1971 for those same terminals and for your system? A. Yes, it does.

Now, this does not exclude any driver employee regardless of what he made. He may have made ten cents or he may have **[703]** made twenty thousand dollars. In any case, he is in there.

Q. I assume it also does not indicate how many hours were worked by any city employee or any line driver employee? A. No, sir.

Q. To the best of your knowledge, did the plaintiff's Exhibit 231 have any breakdown as to the number of hours worked by any city driver or any road driver? A. No, sir.

Q. There are two entries on Exhibit MMM that have brackets and an asterisk, and I believe the key indicates that in those

two instances a city driver actually earned on the average more than the road driver. A. Yes, sir. At our LOS facility, and at our San Francisco facility, the line driver—average line driver at our LOS facility actually made $5631.00 less than the city driver.

The Court: Do you doubt this, Counsel? You seem to be grinning about it quite a bit.

Mr. Herman: Well, my understanding of the union contract, they have $150.00 a week guarantee.

A. (By the witness) No, sir.

The Court: Let's bring this out. You've distracted my attention.

Mr. Herman: Excuse me.

Q. (By Mr. Schuler) To clarify the exhibit, does LAX refer to a Los Angeles terminal? **[704]** A. (By the witness) Yes, sir.

Q. LOS also refers to a Los Angeles terminal. A. Yes, sir, it does.

Q. Now, you were identified by Mr. Sydebotham as having help prepare the information on Exhibit LLL, the Memphis line haul accident summary. A. Yes.

Q. Was this prepared not only for support of his testimony, but in the nature of rebuttal to the testimony of witnesses from Dallas who indicated that there was apparently a policy preventing transfer from city drivers to the road? A. Yes, it was.

Q. To clarify LLL just a bit, under the column of—the third column of numbers of drivers, which was indicated as being the city drivers who transferred to the road for 1969, there is the figure fifteen for 1970, there is the figure twenty-five for 1971 and there is a figure thirty-two. A. Yes, those are cumulative.

Q. I want to clarify this. The fifteen drivers from 1969 appeared within the twenty-five for the next year. A. Yes, yes, yes, it did.

Q. All right. Did you also prepare a further exhibit along that same line reflecting upon the comparison of degree of qualification of a city driver transferring to the road as compared to a road driver who had prior road driving experience? **[705]** A. Yes, I did a project on that.

Q. Is that the document that is marked as Exhibit NNN? A. Yes, it is.

Q. Would you explain how you went about preparing that exhibit and the findings of the exhibit itself? A. In an effort some time ago, this year, or last year, pardon me, to find out what it really takes to make a line driver, we measured certain variables, measurable variables of best drivers and poorest drivers. Let me give you a little detail on that, if you will.

Each line driver has an accident record card maintained by Mr. Sydebotham, and it lists his entire accident and injury experience from the day one until present with us. We went through five of the largest terminals, I believe it was LAX, LOS, Winchester, Denver and Memphis, and from the little record cards selected what appeared to be those who had the very best frequency and those who had the very worst frequencies. We then reduced that selection down to one hundred of the best and one hundred of the poorest.

For example, the best drivers included many drivers with ten, fifteen, twenty, thirty years of experience with no accidents. The poorest drivers included drivers with frequencies of injuries or accidents of perhaps one a year, and included three who were killed in single-vehicle accidents.

And then, from their original applications, measured **[706]** these certain variables and included in the variables we mentioned was the years of over-the-road experience as shown on the original application when the driver was employed,

and we found that among the best drivers, those that had—well, pardon me, those drivers that had from no to under three years of road experience, there were seventeen of the best drivers that fell into that group and thirty-seven of the poorest drivers that fell into that group, and three and over years of road experience, this is not commercial driving but over-the-road experience, eighty-three of the best drivers fell in that group and, of course, sixty-three of the poorest drivers fell in that group.

So from this we might conclude that there is a very definite relationship between over-the-road experience and your predictable success or as a safe over-the-road driver.

Q. And that is measured as the time of hiring? A. As of the time of hiring, yes, sir.

Q. You were present at the depositions of the various terminal employees. I want to ask you some questions regarding the policies, procedures and standards of the company.

Do you have general policies in the general office with which you work regarding the employment of the various types of employees used by the company? A. We have our MOI. I believe it is the Manual of Instructions that's been referred to previously, which is **[707]** primarily procedural in nature. The general policies disseminated through directives and executive meetings, that sort of thing. But generally, our policies are designed to be general and allow the terminal manager the flexibility that he needs in his day-to-day operation.

Q. From your review of the company files, do you know whether the policies of the predecessor companies tended to be general in nature or specific in nature.

Mr. Fenton: Your Honor, I object to the form of that question.

The Court: What?

Mr. Fenton: It's unclear to me what the——

The Court: Yes, what——

Mr. Schuler: I will rephrase it, Your Honor.

The Court: All right. I sustain the objection.

Q. (By Mr. Schuler) From your review of the company files, were the personnel policies of the predecessor companies reduced to writing in any respect? A. (By the Witness) T.I.M.E. and DC had primarily procedural manuals. DC was a little more detailed, if you will.

We have seen in our industry as far as personnel policies and practices, and going back as far as they do at least, to '62, a loose, no procedure, no policies, to the mid-sixties when **[708]** you see a lot of tests and rigid requirements and quite definitive inflexible standards, and we now are back to the—we have digressed from that now to where we are talking on general policies to allow terminal managers flexibility to allow him to select the best qualified employee, if you will.

Q. For example, do you have a company policy as to whether or not you hire a person with a criminal record? A. No, sir.

Q. Why is that? A. You can't write a policy that would preclude hiring anybody with a criminal record. There is just no way to define what an excludable criminal case would be. Each case has to be weighed on its merits.

Q. There has been some testimony in depositions in the past that there were persons excluded based on a criminal record. What is the present policy of the company as directed to these terminals in specific regard to consideration of criminal records? A. Just exactly what I've said, that criminal records will have to be judged on their individual merit. As a matter of fact, there is a blank on our application that asks if you have ever been convicted. If a man was to say he wasn't, why, we make no formal effort to check it. It may

come out in our other background checks that we do. At that point that is application falsification and that's a different matter.

[709] Q. To what extent are your policies governed by governmental regulations? A. To a great extent.

Q. I didn't get your answer. A. Our policies are governed by legal constraints to a great degree, if you will. Also, by contractual constraints. We have to deal with the DOT, driver qualification——

Q. What is the DOT? A. Department of Transportation.

Q. All right. A. The Title 7 regulations, the executive order, the wage and hour people, Mr. Wells' contracts, any number of things.

Q. Do the governmental regulations require that you have any age limitation on any of your employees? A. I believe it is the Department of Labor, Wage and Hour—for instance, you can't let a person's age from forty to sixty-five affect his hiring, and conversely, by the DOT you have to be twenty-one years old to drive.

Q. That is for driving? A. Yes. In interstate commerce or in intercity or intracity, if you will, and in dangerous article handling.

Q. Do you have any general company policies as to the standards that must be met regarding typing experience, or machine handling experience in the office, or a number of years of driving experience for drivers, or taking of physical tests **[710]** for dock employees, that type of thing? A. Well, the three you referred to, we have no general requirements for practical office skills. That again is the terminal manager's decision based on what he needs and what is available at the local area. We have no requirements on general office or directed requirements on number of years experience required for a driver. We do enforce those things set out by the De-

partment of Transportation as far as driver qualifications. That includes a test, which you don't have to pass a written test, but the driving test which you do have to pass, the application and the motor vehicles record check, if you will, on drivers, and we do require, of course, dock men to take physicals, servicemen to take physicals, mechanics to take physicals, supervisors to take physicals.

Q. Is that related to the fact that they do work that requires physical exertion, lifting? A. Why, certainly. Workmen's compensation costs will probably some day exceed accident costs, I'm sure, if they don't already.

Q. You indicated that filling out an application is required to your knowledge, is that a requirement of the Department of Transportation? A. It is a requirement of the Department of Transportation and ourselves, of course, as a matter of sound personnel practice.

[711] Q. And as such, is this made known as company policy to the various terminals? A. Yes. That is, of course, in the MOI, the procedural manual.

Q. You also indicated that driving records are checked. Is this a general company policy or procedure? A. Yes. That is laid out in the procedural manual.

Q. Now, would you tell the Court some of the procedures you have used since you have been personnel manager for the last two years to encourage the hiring of additional minorities in the various terminals? A. Basically, I think the key to success in this would be and has been source development, and for lack of a better way to put it, standards reduction.

The Court: What?

A. (By the witness) Standards reduction, a reduction of standards. For example, I went to Denver sometime early last year and Denver, of course, has a good source of line drivers for a couple of reasons. It's a nice place to live, and secondly a

lot of carriers have moved out of Colorado in the last several years because of a particular restrictive ton mile tax. They don't have a lot of drivers located there. So there is an excellent line driver pool located in Denver, so they were quite successful in holding to a fairly general standard for five years over-the-road experience, and were able **[712]** to get as many drivers as they needed under those bases. And so I went personally and worked with the line driver supervisor there, convinced him the standards perhaps should be lowered, and helped him with source development. I must say he has done a better job with that than I did by himself since, but as a result, in 1970, I believe, Denver had three hundred seventeen, or so line drivers perhaps. I think they had one Spanish surnamed. Last year we were successful in placing eight minorities out of twenty-eight road driver hires. About twenty-nine or thirty percent there. Of those eight we placed five or six had less than the five-year road driving requirement they had before.

Q. Do you remember how much driver experience, road driver experience they had? A. I know one had less than two years and the other four or five had less than five. There were two who had considerable experience. They had been owner-operators.

Q. At the Denver terminal, are there some over-the-road operations going from Denver over the montains to the West Coast? A. Yes, sir.

Q. Does this involve a different type of driving skill generally than driving on level plains and so on? A. Any degree of graphic or climatic difference from region to region will involve different skills, of course.

[713] Q. Are there any other specific things you can point to as to source development or training of minorities for certain types of jobs? A. Well, the two principles that I named earlier, that of source development and standards lowering. We have applied it in a lot of our office facilities and we have applied

it quite a bit here in our general office facility, as a matter of fact, and if you approach it with the idea of hiring on potential rather than what particularly they may have done, in spite of the fact that what you are looking for is available elsewhere, then you have the proper attitude or the proper approach.

I believe Mr. Anderson mentioned a 1972 change of operations involving a change from a sleeper operation to a single-man operation out of Chicago east. Of course, a lot of this involved domiciling drivers at Buffalo, Cleveland, Albany and a lot of the Chicago drivers were, of course, redomiciled, but as a result of that change, we had to hire about twelve road drivers in that particular region. We were only able to place two minorities in this group, but not primarily because of our standards, but because the New York Throughway Association, State organization, has very stringent rules on who is going to pull forty-foot doubles up and down their throughways.

Q. What were those requirements? A. At this time I can't give you them, but they do require that the driver be licensed through them, hold a special license **[714]** through them.

Q. Is that license based in part upon years of road experience? A. It is based on experience, it's based on his record, it's based on driving.

Q. What do you mean? A. Driving experience. In other words, his road driving experience.

Q. Have you instituted any programs of training supervisor trainees? A. Yes. For a couple of reasons. There are not as many minority supervisors available to satisfy all the companies that are looking for them. We have a difficult time attracting minority people from our docks, from our city fleets, and that is financial. I believe we showed that. So we, in an effort to get minority supervision, then we have had to, or supervision as a matter of fact, we have had to institute or hire supervisor trainees. It's not particularly a formal program, but as local

conditions require, a terminal manager may hire a supervisor trainee and bring him along himself, if you will.

We have, I believe, about five of these going on now, and three are black.

Q. Is that a problem related only to blacks or minorities, or does it occur generally in trying to get supervisors? A. Yeah, I tried to say that. It's a problem getting **[715]** supervisors.

Q. You had previously sponsored an exhibit that showed that in some cases supervisors make less than hourly employees. A. Yes.

Q. Is that a direct factor in getting these supervisors? A. Definitely.

Q. And in your working with the various terminals, and as shown by Exhibit Triple A, the contacts through minority resources, referral services, have the inquiries been more pointed toward getting people in the more highly skilled jobs such as road drivers and mechanics than in getting cadidates for some of the other jobs in the terminals? A. Yes, definitely. These I said I went through all these records when I first arrived with T.I.M.E.-DC, and on the basis of the letters written to sources, yes it would indicate that they had made pointed efforts to attract skilled people on the basis of the contract compliance people correspondence, which was generally favorable, or at least innocuous. The progress seemed to be quite good.

Q. There have been statistics introduced here on the part of the government. Have you had any occasion to study statistics yourself? A. Yes, sir.

Q. And in your preparation generally of these exhibits, did you run into any difficulties with either the statistics **[716]** that were avilable to you from company records or the statistics that were made available from the plaintiff's sources? A. Well, the statistics, of course, from the company records are not—they are good to the point that we have everybody accurately identified, I suppose. Prior to 1970, of course, there were no identifications made racially or ethnically, so that is reasonable, you could say, but in trying to make a simplistic comparison with these figures to any particular city, region, the country, it is extremely difficult, if not impossible, to come up with how you have progressed to where you are at in any point in time.

On such a simplistic basis, some of the problems you find first of all are the pure lack of definitive or comprehensive statistics. We mentioned earlier that the best Spanish surnamed statistics available to date are the 1963 subreport from a 1960 census figure, and that is only for the five southwestern states.

Another of the things that make it difficult to make a comparison, I mentioned these earlier, is where is your terminal, and where are the minorities in that community located, what is the public transportation between our terminal and the minority community or any community. What is the age of any particular segment of the population, the work force age; what are the qualified people available within any segment of the **[717]** community, black or white? There are so many variables that a real definitive approach is not practical.

Q. Now, do you have any intention to maintain an on-going program of increased hiring of minorities and attempt to train minorities, if you will, as you have indicated you have trained supervisors, in your capacity as the personnel manager at T.I.M.E.-DC? A. Yes, sir. Remember, part of our exhibits showed a very marked decline in total employment. It is extremely difficult to do anything when your total employment is decreasing.

Now, Mr. Wilkins expressed that we have a requirement to expand and grow, and I'm sure that we will, and consequently, hiring will increase. We plan to approach it, attack it from two points, in source development, standards modification, and plan, of course, to emphasize those particular areas where we may be deficient.

Mr. Schuler: Thank you, Mr. Hutchinson. No further questions.

The Court: Before we go to the cross, Mr. Wells, how about your witness that you wanted to get in today out of order?

Mr. Wells: If Your Honor please, it is quite connvenient for him to be here tomorrow.

[718] The Court: We may get to it today.

Mr. Wells: As a matter of fact, an exhibit which he may be bringing is lost on the airline and it might not be here until tomorrow morning.

The Court: You should have sent it by T.I.M.E.

All right. Do you want to go ahead with cross-examination now, or do you want a few minutes?

Mr. Fenton: I'm ready, but—if the witness would like a few minutes, that's fine.

Cross-Examination,

By Mr. Fenton

Q. Do you have Defendants' Exhibit VV before you, Mr. Hutchinson? A. It's two B's?

Q. Right.

The Court: B or V as in Victor?

Mr. Fenton: V as in Victor.

A. (By the witness) Oh. Yes, I do, sir.

Q. (By Mr. Fenton) I believe you testified that in arriving at the percentage of minorities, the population that you used is the standard metropolitan statistical area percentages where T.I.M.E.-DC has terminals, is that correct? A. (By the witness) And where there is a standard metropolitan statistical area report.

[719] Q. Isn't it true that there are many terminals of T.I.M.E.-DC where there is no standard metropolitan—— A. Yes, sir.

Q. Did you include those statistics in those statistics? A. Yes, if it was an Urban Place or in some instances, like in Decatur, Alabama, I think we had to use the county, the best there was.

Q. Were there any instances where there were none available so that you could not include that terminal? A. No, sir, there were none.

Q. All right. Now, did you use overall population statistics rather than the particular age of any group? A. Yes, we used overall population figures.

Q. You didn't break out, attempt to break out a working force, age force. A. No, sir, but we probably will.

Q. Referring for a moment to Exhibit KKK. A. Yes, sir.

Q. Did I understand your testimony to be that supervisors and foremen work an average of 86.6 hours in a two-week period rather than eighty? A. It is a semi-monthly pay period.

Q. Right. A. Mr. Fenton, there are four and a third weeks per month.

Q. So they would work 86.6 hours to obtain that semi-monthly **[720]** pay check. A. Yes, sir.

Q. And then in addition to that, you computed some overtime that you arrived at. A. Yes, sir. So the second and third column then are your effective hourly rates comparison.

Q. So excluding overtime, they would work an average of a 173.2 hours a month. A. Yes.

Q. And when you got the overtime averages that they worked, was it your testimony you got this for the month of March, 1972? A. Yes, 1971.

Q. All right. Turning to Exhibit MMM. A. Is that M or N?

Q. M as in man.

The Court: M as in Michael.

A. (By the witness) There we go.

Q. (By Mr. Fenton) Are the drivers included in this exhibit the total number of drivers that were used on the city and on the line at these various terminals regardless of whether they were only part-time drivers during that year? A. (By the witness) Yes, sir.

Q. Do you have any idea, referring to the LOS terminal, how many of those line drivers were part-time drivers? A. I have some notes on it, yes, sir, but not—not here **[721]** in front of me, Mr. Fenton. These, of course, include all drivers regardless of their amount of earnings, regardless of their status. Our previous, or your previous figures that I gave to you excluded those who made less than three thousand dollars, an arbitrary figure, but we ran these '71 earnings the same way and fround that the LOS drivers, the LOS line drivers, and the San Francisco line drivers made, excluding those who made less than three thousand dollars, still made less money than the city drivers for 1971.

The Court: Now, so we are talking about MMM, and Plaintiff's Exhibit 231, I believe it is, and they are not on the same basis because you have excluded those less than three thousand on 231.

A. (By the witness) That's right. But we do have them on the same basis.

The Court: I mean, it is hard for the Court to compare the two since they are on a different basis, even though one is used for rebuttal of the other one.

Mr. Schuler: Your Honor, we——

The Court: I am not requiring you to put the other one in, but if you're going to rebut it, it would be easier for me to compare it.

Mr. Schuler: Well, if the plaintiff would like to have the figures, we'd be glad to supply them.

Q. (By Mr. Fenton) With respect to road drivers, Mr. **[722]** Hutchinson—— A. (By the witness) Yes, sir.

Q. ——does the union reserve the right, if the average weekly earnings of his road drivers fall to $150.00 or less, to cut the road seniority board? A. That is a typical clause, yes.

Q. That is in the contract of the company as to the Teamsters union? A. In some, yes. It's not all.

Q. Is it in the Western supplement? A. I am not for sure.

Q. Well, let me show you a copy. A. Let's look.

Q. Let me show you a copy of the National Master Freight Agreement.

This is Plaintiff's Exhibit 203(a). In the National Master, it appears in the first document, turn to Page 23, if you would.

Mr. Herman: Excuse me, Mr. Fenton. The pages may not be the same. That is the National Master, but from a different subject matter that he has. Use the article and section. Article 5, I believe.

Mr. Hunter: Page 30.

The Court: Thirty, Counsel says.

Q. (By Mr. Fenton) All right. Referring to Article 5, **[723]** Section 4, Page 30 of Plaintiff's Exhibit 203(a). A. (By the witness) Yes, sir.

Q. Does that give the union the right to cut the road board? A. Yes, it does.

Q. If the—— A. If the earnings fall to $150.00 or less, not construed as imposing a limitation on earnings.

Q. All right. A. There also is a—on Page 31, there is a paragraph that says in determining whether average weekly earnings fall to $150.00 or less, only the earnings of the lower twenty-five percent. This will vary from contract to contract, or may in fact be different things in supplements that cover it, too.

Q. All right. Thank you. Do city and dock employees have the same kind of guarantee on a minimum wage, such as—— A. Well, not necessarily a minimum wage. They are guaranteed hours.

Q. All right. If their wages fall below a certain number? A. I don't believe that is in the city and dock contract, sir.

Q. Just in the road contract? A. Yes, sir.

Q. That road contract was in the National Master Freight Agreement, correct? **[724]** A. Yes, sir.

Q. So that that would apply nationwide rather than the National Master—wherever the National Master Freight Agreement is effective. A. We could assume so, yes.

Q. Now, are you aware of any time in the past where a computation such as you have done here in Exhibit MMM would result in a lower line driver salary than city driver? A. The ones we have done, based on the exclusion of those who made less than $3,000.00, there were no instances where city drivers made less—or pardon, line drivers made less than the city drivers.

The Court: There were no instances where they made less?

A. (By the witness) No, sir. I believe we did '69 and '70, were the years. Prior to that, '67, 6 and 5, our computer didn't compute.

Q. (By Mr. Fenton) Now, turn, if you would, to Exhibit NNN, Mr. Hutchinson.

Now, if I understood your testimony correctly, that—First, let me ask you this: Did you yourself do all the work that went into this exhibit? A. (By the witness) Yes, sir.

Q. Now, as I understand your testimony, you took five of your largest terminals and you selected the very best and the **[725]** very worst line drivers. A. Yes, sir.

Q. And what number of each did you select out? A. One hundred of each. Well, the first selection may have amounted to a hundred and fifty to two hundred of each, then we boiled that down to the very extreme examples.

Q. So one hundred of the best and one hundred of the worst. A. Yes, sir.

Q. And you had enough so that you had a total of two hundred at all those terminals? A. Yes, sir. Well, this was a hundred from the five, out of the five.

Q. Well, in other words—— A. Not a hundred, not a hundred from each terminal, no, sir, but a hundred from the five.

Q. I see. So your final hundred came from each of the five terminals. A. Yes, sir.

Q. Do you have any idea of what numbers come from each of the five? A. Probably proportionate to the number of line drivers at each facility, but no idea, simply as a matter of—Now, this type of sampling is, of course, not valid to draw any inference about the total line driver population, but it is typical and valid for comparing best and poorest drivers, if **[726]** you will.

Q. Now, was your testimony, the only factor you used in arriving at your criterion or arriving at your conclusion actually of best or poorest were the accidents that these individuals had? A. Yes, sir.

Q. Did you do any kind of breakdown as to the kind of accident, or did you include each and every accident that they had listed on the record? A. Each and every accident. First of all, there are few accidents that are non-preventable. Secondly, measuring an accident by its severity is not necessarily valid as to an accident. An accident is an accident.

Q. But you did include all the accidents chargeable or non-chargeable. A. Yes, sir.

Q. And also whether the driver himself caused it or was involved in it, is that correct? A. He had to be driving.

Q. He had to be a driver, but someone else could have hit him and it would show up on his record, right? A. Yes, sir.

Q. You would have counted that? A. Yes, sir.

Q. You have no idea of how many of the latter were in there, **[727]** or do you? A. Well, because we looked at so many drivers, Mr. Fenton, I suppose between Denver and Memphis, Winchester and Los Angeles, there are some eleven or twelve hundred drivers, that the very worst drivers were so very bad that the proportion of non-preventable accidents would be rather insignificant compared to their preventable accidents.

Q. Well, let me ask you this: If a driver had one bad accident, say he rolled a truck and then maybe the only other accident he had was a non-chargeable, would you have included him in your very worst category? A. No, sir.

Q. Well, what cutoff did you use to put a man in the worst category? A. The differences on cards were quite distinct. In other words, it didn't ever get down to a point to decide whether three accidents in three years or two accidents in three years would qualify you.

Q. What was that distinct point? A. There was no really distinct point, if you will. I would say in remembering, this is sometime ago, I didn't do it in this connection, but sometime ago I would say there was probably a frequency, oh, of no less

than one every two years would qualify you for the poorest category.

Q. Well, what was the minimum accident that a man had to **[728]** have to be included in the worst category? A. The minimum accidents, I can't say that. I don't know what it was.

Q. What was the least number of accidents a driver had to have to be included in the best category? A. I'm sure that in this best category there are no drivers that had more than one preventable accident in a career that may have run from no years to thirty-five years. I do remember specifically if they had less than ten years service, I didn't pick them if they had a preventable accident in that ten-year period.

Q. Could they have had more than one and still be included? A. When you're talking about guys with best experience, you're talking about drivers with twenty or twenty-five or thirty years experience. They will have been bound to have had one or two, but I'm sure that there is nobody in here that had more than two preventable accidents. We can debate about the sample for a long time, but I'm quite confident that this represents a very good selection of the best drivers and the poorest drivers.

Q. Did you use any kind of a scale with respect to evaluating the severity of the accident? A. Severity of an accident shouldn't be used in evaluating an accident.

Q. Did you use any kind of a scale? **[729]** A. No, sir.

Q. In developing your best or worst in terms of accidents themselves. A. No, sir, no, sir.

Q. Did you do any kind of a breakdown to determine whether a man with one year or less road driver experience had more accidents than a man between one to two years experience, or a man between two and three years experience? A. No, I didn't. I would have it from my source material, I suppose.

Q. Did you do any kind of a breakdown going the other way to determine whether a man between three and four had more

accidents than a man between four and five and so on? A. We broke it down in three-year intervals. The reason we chose three was primarily related to a reduction of general experience requirements to that level, if you will.

Q. So these two categories here on your exhibit NNN are the only two you used. A. No, sir, no, sir. We used, in the original report, from which this was taken, it was zero and under three, three and under six, and six and under seven. Three-year intervals.

Q. All right. I gather from this exhibit that the company has hired line drivers with less than three years road experience, is that correct? A. Yes, they have.

[730] Q. Does that include whites? A. I'm sure it would.

Q. As a matter of fact, wouldn't a great majority of them have been whites? A. Certainly, since a great majority of our line drivers were previously white.

Q. Now, I believe you also testified with respect to a five-year standard at Denver, and that would be for the road drivers. Was that a rigid requirement, that five-year standard? A. I don't know how rigidly they applied it, Mr. Fenton. As we know from the summer, that there is no such thing as a real rigid requirement.

Q. Do you recall the testimony of a Mr. William Franzen? A. Not specifically.

Q. Do you recall that Mr. Franzen moved to road driver although he had less than five years road experience? A. Yes, I do.

Q. Do you recall his race? A. Mr. Franzen is white.

Q. I believe you further testified that one of the reasons you have difficulty attracting minorities from dock and city to supervisor jobs is because of the salary. A. That is anybody, Mr. Fenton.

Q. Isn't it an additional reason that you would have that **[731]** difficulty the fact that when you move from dock or city to supervisor that you have to give up your seniority? A. Well, at that point, well, of course, you wouldn't give up your seniority for vacations, but at that point in time when you move from a dock to a supervisor position, your seniority for bidding and whatever benefits you may get on the dock has no meaning because you are out of that classification, the same as moving from city to road or whatever.

Q. In other words, your seniority for job protection is given up. A. Yes, if you will. And then we have to consider how much seniority weighs among job protection for supervisors.

Q. But a supervisor has no seniority for job protection purposes, does he? A. No, sir. It may be a factor in his job protection.

Mr. Fenton: Could we have just a moment?

Q. (By Mr. Fenton) When foremen or supervisors miss a day due to sickness, do they still get paid for that day? A. (By the witness) Yes, sir.

Q. What about dock employees when they miss a day because of sickness? A. Generally no. There may be isolated local contracts.

Q. Generally, they do not. A. They do not.

Q. City drivers, do they? **[732]** A. No, sir.

Q. Did you figure that in your computations on Exhibit KKK, I believe it was? A. No. It's kind of a nebulous figure or area, if you will, assuming that the overtime ratios that would be used are computed from full hours worked by the dock man, so the only factor then would be the time off that the supervisor may have had.

Mr. Fenton: That's all I have, Your Honor.

The Court: Mr. Wells?

Cross-Examination

By Mr. Wells

Q. Are any of your supervisors covered by collective bargaining agreements? A. No, sir.

Q. Do supervisors then have any form of job protection in terms of seniority or anything else? A. Other than their own ability, none.

Q. They have just whatever oral or written individual agreements they may have made with management. A. Yes, sir, if you will.

Q. Now, from your knowledge of the industry, is it the practice that when a person leaves a bargaining unit covered by a collective bargaining contract, that he does not retain **[733]** seniority within that unit? A. That's right, sir.

Q. Whether he goes to supervisor or whether he goes over to Lee Way or whether he goes to some other bargaining unit, or whether he retires from the industry or whatever, he loses seniority as of the time he leaves that unit. A. Yes, sir.

Q. That is——

The Court: How about sickness; you wouldn't lose seniority if you got sick, would you? How does that work? A. (By the witness) No, not if he got sick. Well, of course, there are some contracts that if you are off sick for more than two or three years, of course, you can.

The Court: When you say, "when you leave that unit," what do you mean by leaving the unit? Develop that.

Q. (By Mr. Wells) Along the line of the Court's question, when you leave the unit to become employed elsewhere, or to indicate that you no longer desire employment in that unit, did you understand my question in that sense? A. (By the witness) Yes, sir, I did.

Q. With respect to illness, does the contract provide for health and welfare payments by employer? A. Yes, it does.

Q. And in accordance with the health and welfare plan, are employees who become ill compensated in some way? **[734]** A. Yes, I'm sure they have protection under that.

Q. Are they granted leave from that unit but considered within that unit while they are on that health leave? A. Yes. That is part of these five hundred folks we talked about earlier.

Q. Are there also provisions in the contract for leave of absence for specific purposes as indicated in the contract? A. Yes, sir.

Q. For example, for limited periods of time, an employee might be elected by his brothers in the union to a union office and have some right to take a leave from that particular unit while he served as a representative of his co-workers. A. Yes, or for any personal reason.

Mr. Wells: I believe that's all.

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[737] Redirect Examination

By Mr. Schuler

Q. Mr. Hutchinson, you were asked some questions regarding Exhibit KKK, which compared effective hourly income for supervisory personnel and hourly rated personnel, and one of the questions that Mr. Fenton asked you was whether or not a supervisor's pay continues while he is sick, whereas an hourly rated man's pay does not continue while he is sick.

In that regard, does the supervisor work any additional hours before and after each of his shifts for which he is not paid? A. Yes. The assumption we made when we figured this was that, and it is conservative, but the assumption was that the supervisor walks onto the floor at the same time that the dock man

does, and walks off the floor at the same time, and in all reality, this isn't so, because you can't effectively supervise that way, without going to the road dispatcher and checking with your particular shift supervisor, so to speak, and going through the on-going operation with the fellow you're replacing.

Furthermore, if somebody is a foreman, dock foreman, if the guy is supposed to replace me is sick, we know then who takes his shift.

Q. Regarding Exhibit NNN, you were asked some questions that suggested a comparison between the number of white and black drivers that might have been compared on that exhibit, **[738]** and on the exhibit as to the Memphis city drivers who transferred to the road. Was there any intention to compare drivers by races? A. No, sir. Our purpose was not to measure black and white things, our purpose was to measure road experience on the one hand as a predictor of safe driving on the road, and to measure the results without regard again to black and white of a city transferee on the board.

Q. The specific exhibits I had reference to for that question were LLL as to the Memphis line haul accident summary, and NNN in relationship between safety records and over-the-road experience prior to employment. Did you understand my question related to those two? A. Yes, sir, I did.

Mr. Schuler: Thank you.

Your Honor, I'm going to offer another exhibit that is similar to Exhibit MMM. I had it marked as Exhibit PPP.

The Court: I believe this is in response maybe to my question wondering about the validity of NNN since it wasn't on the same basis as 231 that you were seeking to impeach there, so I am going to permit it to be introduced.

Mr. Schuler: Yes. We did not introduce its originally because we felt that there are variables in these figures as to the number of hours worked by city drivers and road drivers whenever you

try to compare them, and we thought **[739]** that actually MMM was a fairer exhibit because it just showed the earnings of all employees, but in the interest of completing the record——

The Court: We'll have both sides of the picture presented with this.

Q. (By Mr. Schuler) Mr. Hutchinson, was Exhibit PPP prepared in the same way as MMM except that you excluded earnings under $3000.00? A. (By the witness) Yes, that's true. This shows then on that basis that the LOS drivers here designated made—some line drivers made some $3600.00 less than the LOS city drivers.

Mr. Wells: If Your Honor please, I object to PPP on the same ground that I objected to the counterpart exhibit which the government offered, on the ground that to select a $3000.00 level is purely arbitrary and has no relationship to anything in this industry. I believe the record already shows the arbitrary nature of that selection. We think that it is much more demonstrative of the situation to take the entire group.

The Court: As they have done in MMM?

Mr. Wells: Yes, Your Honor.

The Court: Well, I think that would go to the weight to be given to these. I understand the basis upon which these exhibits are introduced and I'm going to overrule the objection.

[740] Mr. Fenton: Could we stipulate that PPP represents the earnings for 1971?

Mr. Schuler: Yes. It's not properly marked. It is for 1971.

The Court: Well, it's the same period as the triple M exhibit would cover.

I'll tell you, on the original of that exhibit, triple P, you put for 1971 on there. Yes, she has it.

(Defendants' Exhibit PPP received into evidence by the Court as Defendants' Exhibit PPP—1971 earnings of all driver employees at selected terminals.)

Q. (By Mr. Schuler) Mr. Hutchinson, you were also asked questions about whether you made any distinction on Exhibit NNN as between the best drivers and the worst drivers as to whether an accident was chargeable.

Now, does it make any difference in the dollars you pay out for repair costs, for equipment, whether that accident is chargeable or not?

Mr. Fenton: I would object to the form of that question.

Mr. Schuler: I will rephrase it, Your Honor.

The Court: All right.

Q. (By Mr. Schuler) Is there any difference to the company in its operations of the business based on whether the accident **[741]** is chargeable or not? A. (By the witness) No, unless there is the possibility that you can collect. Let me define chargeable and non-chargeable as defined by the ATA, if you will.

Q. What is the ATA? A. American Trucking Association. That's the contest that Mr. Sydebotham talked about. They sponsor that contest.

Q. Is that the association that most trucking companies of all categories belong to? A. Yes, sir. Yes, sir. A chargeable accident—a non-chargeable accident, pardon me, is defined as an accident in which the driver has done everything within his power to prevent, and boiled down then to a practical thing, about the only type of accident that is non-chargeable is when he is legally parked or legally stopped and somebody hits us. So the incidence of non-chargeable accidents to chargeable accidents are few. And again, I think I expressed our safety department's opinion, and my opinion, on whether you measure an accident by its severity or dollar cost or whether it, in fact, costs a life or didn't. It's still an accident.

Q. (By Mr. Schuler) If you had to replace a tractor in its entirety due to an accident, chargeable or not, approximately what kind of replacement costs are we talking about? A. Twenty to twenty-five thousand dollars.

Q. And similarly, if you had to replace a trailer, whether **[742]** it is a single unit, a so-called semi-trailer, or two trailers, the so-called pups, what kind of expense would there be to your company? A. Oh, five to twelve thousand dollars, say.

Q. For each trailer? A. Yeah.

Mr. Schuler: That's all I have. Thank you, Mr. Hutchinson.

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Recross-Examination

By Mr. Fenton

Q. Mr. Hutchinson, if one of your drivers is involved in an accident and there are other parties also involved in the accident, and from your investigation you make a determination that it was the fault of another party, party other than your driver, do you make every effort to recover the monetary loss which you have suffered in that accident from the other driver? A. Every effort? What does that mean?

Q. I mean do you attempt to recover money that you have lost in that accident, such as caused by damage to your equipment from the other driver? A. Yes, we would.

Q. Now, I believe you made the statement that the incidence **[743]** of non-chargeables to chargeables would not be very great. A. Yes, sir.

Q. What do you base that on? A. What do I base that on?

Primarily experience in the field. I have no particular data in front of me that says we had this number of——

Q. In other words, you didn't go through the hundred drivers before—the hundred drivers you used in Exhibit NNN, you

didn't go through and make an actual computation of that incidence. A. No, sir.

Mr. Fenton: That's all I have.

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[751] **RALPH DIXON,**

called as a witness at the instance of the defendant, unions, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Wells

Q. State your name, please, sir. A. Ralph Dixon.

Q. What is your occupation, Mr. Dixon? **[752]** A. Labor representative for the Teamsters Union.

Q. Do you belong to a local union chartered by the International Brotherhood of Teamsters? A. I am a member of Local 745 in Dallas.

Q. How long have you been a member of that local? A. Since the early part of 1944.

Q. Would you very briefly, beginning in early '44, trace your relationship with the Teamsters Union, either its local or any other Teamster body. A. At that time I was a member of the local union and an employee of Texas and Pacific Motor Transport as a line driver, and sometime in 1945 I was selected as a steward on that job, and just shortly after that I was selected as a trustee on the executive board of that local union.

Q. May I intrude there. Is it true that each local union has a board of trustees consisting of seven members? A. No,

they have an executive board consisting of seven members that contains three trustees.

Q. Who else make up the executive board? A. A president, a vice president, a secretary-treasurer, a recording secretary and three trustees.

Q. How are those seven officers of a local union selected? A. They are elected by the bylaws and constitution of the union by the membership of that local union.

Q. All right. Now, we've gotten to the point where you were **[753]** a trustee of Local 745. Would you proceed, please, sir. A. In early 1946 I was hired by the then manager of that local union as a business agent, or assistant agent, to work for the local union in organizing and helping to negotiate whatever assignments were given to me.

Q. You speak of manager of a local union. Is there such a constitutional officer or what do you mean by that? A. No, this is a person designated or selected by that membership when they elect the officers as the principal officer in charge of the local union.

Q. In some local that may be the president, in others it might be the secretary-treasurer, is that true? A. Right. He is designated as being the one who has the top authority.

Q. All right. He was elected, he in turn selected you as one of his assistants, is that correct? A. Yes, sir.

Q. Now, proceed. A. Sometime in the latter part of 1946 I was also hired by another local union, 342, in Dallas, and during that period I worked for both Local 745 and Local 342.

In early 1947 I severed my relationship with 745 and continued as a representative of 342, at that time as the principal officer of that local union.

The Court: 342 is a Teamsters Union also?

[754] A. (By the witness) Yes, sir. It was a department store and warehouse local union as distinguished from a regular truck-driver's local.

In approximately June, the latter part of June, I believe it was, I went back to the road driving and I drove until I believe sometime in October, at which point I was hired back as an agent, a business agent of Local 745, that local union being under trusteeship at the time.

In early '48, something like the latter part of February or March, that local came out of trusteeship, at which time I was elected by the membership of that local union as the secretary-treasurer and business manager of that local union.

Q. (By Mr. Wells) That is Local 745 in Dallas? A. (By the witness) Yes, sir.

Q. What jurisdiction did that local have? A. It covered all the jurisdiction of the Teamsters Union other than that covered by the warehouse and department store employees from Dallas, generally speaking, halfway to the next local union in any direction.

Q. All right. But was it a so-called freight local? Did you have negotiations and relationships with employers in the freight industry? A. It handled all relationships covering freight employees for that area.

Q. All right. Now, without too much detail, just go ahead **[755]** and tell the Court what other Teamster relationship you had. A. Well, in 1950 I was hired by General President Tobin as a general organizer for the International Union. At various points I have held positions in the trade divisions of the conference or national divisions.

In '52 I quit the International Union and went back to Local 745 until the end of that year. I worked for Local 822 in Norfolk, Virginia in early '53 until sometime in April, at which time I went to work as an organizer for the Southern Conference of Teamsters, covering the south.

In 1958, the first of August, I was hired back as a general organizer for the International Union. Sometime in the mid-fifties I was elected by the delegates of the Southern Conference as secretary-treasurer of the Southern Conference of Teamsters, a post that I've held since that time.

I think that about covers it.

Q. All right. And would you briefly describe the union organization beginning with, for example, the local union, let's say Local Union 745. I believe you have indicated that that is a union headquartered at Dallas with certain geographic and certain industry jurisdiction.

Now, what relationship does it have to other Teamster bodies? A. A local union is a group in a locality that has a charter from the International Union as a local union, which is **[756]** obtained either by the Teamsters organizing a group of people and issuing a charter or by a group of people organizing themselves and requesting a charter from the International Union. This charter permits that local union to have bylaws of their own, which are not in conflict with the National Constitution, under which they handle all of their own affairs, subject only to the requirements of the International Constitution.

The next step is the Joint Council, again a chartered organization of the International Union.

Q. What is the Joint Council? A. A Joint Council is an organization to which local unions in the city where the charter is issued are suppose to affiliate with the Joint Council.

The Court: Now, do you mean just—you say the local union in the city, are you talking about the Teamsters affiliated locals?

A. (By the witness) Yes, sir, always talking about the Teamster local.

The Court: Which freight area or warehouse area or department store?

A. (By the witness) The construction——

The Court: All of them come together in a Joint Council in the City?

A. (By the witness) The way the constitution spells it out, **[757]** if there are more than two or three local unions in a city, then a Joint Council charter shall be issued, and it is a requirement that all local unions in that city belong to that Joint Council.

The Court: What was a little confusing to me, you say within the city, yet a minute ago Local 745 might encompass several cities.

A. (By the witness) But the charter is in Dallas. The charter could be in some other city within that jurisdiction.

The Court: But 745 might belong to more than one Joint Council, say Fort Worth.

A. (By the witness) I know of no instance where the local union belongs to more than one Joint Council. First it says if there is more than—there will be a Joint Council charter issued, then it says that if there are local unions adjacent to that anywhere around and there is not sufficient to justify another charter of a Joint Council, then those local unions belong to this Joint Council. The result is in North Texas and this will spell it out, the Joint Council is located at Dallas, but local unions at Amarillo, Fort Worth, Shreveport, as well as Dallas belong to that Joint Council. So there is two Joint Councils in Texas, one for North Texas and one for South Texas.

The Court: That explains it. Thank you.

Q. (By Mr. Wells) All right. Now, above the Joint Council— **[758]** Well, first, is the Joint Council a membership or a delegate body? A. (By the witness) It is a delegate. Each elected officer of a local union is a delegate to the Joint Council, and then they elect an official executive board of the Joint Council from among themselves, being again, a president, a vice president, a secretary-treasurer, recording secretary and three trustees.

Q. All right, sir. Now, we have pinpointed a local union, a Joint Council. What is the next body? A. The next actual body is the area conference, however, the constitution permits state conferences. We have——

Q. Are there state conferences? A. We have several state conferences. We have a state conference in the State of Texas. The state conference is again chartered by the International Union, and its purposes are generally to be a body through which all local unions in the state could operate with each other in organizing programs and that type of thing.

Q. All right. What is an area conference? A. An area conference is four chartered bodies dividing the International Union into four segments, east, west, north and central. These are bodies under which the constitution says that the director of the conference shall be appointed by the general president of the International Union, but each **[759]** conference has bylaws of its own under which it elects policy board and other officials, so that again the conference, as such, has all of the local unions in the conference affiliated with the area conference.

Q. Is it in turn a delegate body? A. It is a delegate body. The Southern Conference is composed of two delegates from each local union.

Q. In the south? A. In the south.

Q. In ten southern states, roughly from Texas to Florida? A. Right.

The Court: Does this sort of bypass the area council organizational-wise?

A. (By the witness) You mean the Joint Council?

The Court: Yes.

A. (By the witness) It is the governing body for all local unions within the area boundaries.

The Court: Does the Joint Council select delegates to the area conference, or is it selected by local unions?

A. (By the witness) No, the local unions select delegates. The Joint Council do not have delegates to the Southern Conference, although the Joint Council has delegates to the International Convention, but they don't have delegates to the Southern Conference as such.

[760] Q. (By Mr. Wells) May we back up to the joint council for a moment?

If there comes some squabble within the local union and the executive board makes a determination there, which one side in the local is not pleased with, is there an appeal from the local union executive board's decision to somebody? A. (By the witness) This is generally the main function of a joint council, to be governing body over the local unions within that area to which any dispute within a local union, or between two local unions, can be appealed to the joint council for hearing.

Q. All right. The area conference does not perform that function. A. No.

Q. Now, we are to the point of an area conference. You have indicated that the two principal officers of each local in the conference area are ex officio delegates to the area conference. A. Yes.

Q. Do they in turn select some governing body of the area conference? A. Yes, they elect what we call the policy Committee, or Policy Board of the area conference.

Q. How often does the area conference as a whole meet? A. Well, that depends on the bylaws of the area conference. **[761]** The Southern Conference meets as often as may be required by either the delegates or the principal officer or not later than every four years to elect officers.

Q. How often does that Policy Board of the area conference meet? A. It is subject to call at any time by a forum of delegates, or the officers.

Q. All right. Now, we have gone local union, joint council, state conference, area conference. Now, how about the International? A. The International is a union originally chartered by the AFL, but now an independent union that has jurisdiction throughout the United States and its possessions and Canada, covering certain types of jurisdiction, which are numerous, but listed in the constitution itself.

Q. How often does it meet? A. The International Constitution provides that the International Union shall be called into convention every five years.

Q. For example, was there a convention last year in the International Union? A. Yes.

Q. That in turn was a delegate body. A. That is a delegate body. The constitution spells out how the delegates are enumerated and selected. It provides for **[762]** a ratio, depending on the size of the local union. Any local union, however small, has delegates to the International Convention, and then after the local unions reach a certain size, say, seven hundred, from there on for every so many hundred members they have another delegate.

Q. So the larger union locals will have a larger representation than the smaller ones. A. Yes.

Q. What functions are performed at the Internationl Convention? A. Those delegates vote on whatever provisions are in the International Constitution, either to leave them as they are, to change them as they wish, or to make up whatever rules the union is going to live by which are set forth in the constitution.

Q. Does that constitution—does that convention revise the constitution and make policy for the next five years? A. It

sets policy for the next five years except as is accepted in such constitution, to the discretion of the officers which are elected at such convention by the delegates.

Q. All right. And what officers of the International Union are elected by the delegates to the convention? A. The general president. At this point it is general secretary-treasurer, and I believe it is some thirteen or fourteen vice presidents and three trustees.

Q. All right. Now, does that in brief outline the **[763]** organizational structure within the union? A. Yes.

Q. Now, turning your attention——

The Court: One thing. I have either forgotten or didn't understand how the state convention, is it?

A. (By the witness) State conference.

The Court: What is it composed of?

A. (By the witness) It is composed of all of the unions within the state.

The Court: They elect delegates to that, to the state conference, or how?

A. (By the witness) The delegates to the state conference, the bylaws of the state conference provide that the two principal officers of the local union are delegates to the state conference, so those delegates decide on what the bylaws shall be, what the authority shall be and elect the officers.

The joint council is what I call the governing body over those local unions to the extent that whatever appeals come up, whether from individual members or between local unions, are taken to the joint council for them to rule on, and if not settled there, or even if they make a decision, there is an appeal from that body to the International Union executive board.

The Court: Well, everything is a delegate organization with the exception of the local union which is a **[764]** membership organization.

A. (By the witness) Yes, sir.

Q. (By Mr. Wells) Is it true basically, as you have indicated, the joint council is an appellant body from the local unions or local union members, whereas the state conference has to do more in terms of organizing or perhaps investigation and advise with respect to political matters, that kind of thing? A. (By the witness) Well, I don't want to leave the impression that the joint council don't always do those things, and can't, because anything with the local unions in an area want to cooperate with each other, they can, but the principal function of the constitution in setting up the joint council is to provide for an appeal body. The principal function of the state conference is to simply join together the efforts of all local unions in an area in organizing programs and, yes, politically, or any other matter that they are interested in.

Q. All right. Now, we have gone over the organizational structure of the union.

I'd now like you to turn your attention to the bargaining procedures and focusing on the freight industry as of now. We may get in the history a little later, but as of right now, assume that there was an open contract, no contract in the freight industry as of right now. What would happen? **[765]** A. If there were no contract in the freight industry right now?

Q. Yes, sir. Well, wait—— A. What would happen from what end?

Q. Let's back up to what happened in 1970 with respect to the negotiations of various freight contracts which are in evidence here. A. Well, I gather your question goes to this: Knowing that the contract had an expiration date at the end of '69 or early '70, in late '69 it became the responsibility of the various

elected or selected officials of the various organizations in freight to alert all local unions. They, themselves, are supposed to know it, likewise, that the contract expiration date is approaching, and there is then called a meeting of representatives of all effected or affected local unions. These people go into a meeting and discuss how they propose to handle the coming negotiations.

They then set up dates when the call meetings of the effected members of their various local unions in freight to alert those people that at this particular meeting they will consider any proposals that the memberships have to be put in the next contract. At such meeting the local union takes down all requests of any member, they discuss proposals and sometimes the membership will decide, will you propose this, and I propose that, let's put this in the proposal. Other times the **[766]** membership don't agree on everything, so they will put each proposal in, so any proposal that the local union wants to send in, they will send in, in that case, to the national office in Washington, so that all local unions then send in their proposals, any proposal they want to make in the coming contract.

Q. Assuming there are three or four hundred locals involved in freight, I take it that at some point then there are various proposals from three to four hundred local unions. A. Right.

Q. What happens to those proposals? A. Then there is a meeting called of representatives of all local unions, in that case in Washington, to actually take all those proposals and go over them word for word so that the group together can make up from that a proposal that the group wants to present to the employers.

Q. All right. And what is this group that you say meets in Washington to screen these proposals? A. It is delegates from the involved local unions and the involved conferences.

Q. Is it only those local unions that have freight jurisdiction? A. It is only local unions that have freight jurisdiction, although

local unions that have had freight jurisdiction many times have other jurisdictions, but this only concerns freight local unions.

[767] Q. Once this committee made up of the representatives of the freight involved locals meets and screens for the proposals then what happens? A. Well, then, steps are taken to—well, during this time steps are taken to see that all local unions are alerted in the original meeting where there are drafting proposals for the membership to authorize, if they will, powers of attorney to be given by the local union to a committee to handle negotiations.

Q. Then, does each local union in freight execute a power of attorney authorizing a committee to bargain on behalf of that local union with an industry committee representative of the employers with whom that local union has a contract? A. To put it a different way, the only way we got into area negotiations for national negotiations was when local unions gave power of attorney to such a committee to negotiate for them.

In the beginning some local unions gave power of attorney and some didn't. Those that didn't we didn't negotiate for on that basis. We only negotiated on the local unions who gave power of attorney.

At the present time, I don't know of any local union that fails to give power of attorney, but we negotiate for those local unions who do give power of attorney.

Q. All right. Did that power of attorney give the **[768]** National Over-The-Road and City Cartage Policy and—— A. In that negotiation the power of attorney was given to that named body as a body to act as the negotiating committee.

Q. Well, who makes up that committee? A. It is made up of representatives selected by the delegates from the local unions, or appointed by the area conferences.

Q. Well, for example, just picked up this local—National Master and Garage Supplement, which on Page 157 lists the

negotiating committee. Who is Frank Fitzsimmons? A. He is the general president of the International Union at this time.

Q. Just run down there and identify each of the persons on the committee. A. Murray W. Miller is now the general secretary-treasurer of the International Union. At that point he was the director of the Southern Conference.

Joseph Teratolla is the area director of the Eastern Conference of Teamsters.

William Pressor is a business manager of a local union in Ohio. He is also a vice president of the International Union.

William McCarthy is a business agent of a local union in Boston, Massachusetts. He is also a member of the International Executive Board.

[769] Roy Williams is a president-business manager of a local union in Kansas City. He wasn't then, but is now a vice president of the International Union.

Ralph Dixon is myself.

Robert Flynn is a general organizer for the International Union. He is also a representative of the Eastern Conference of Teamsters.

A. J. Hardy, I'm not sure what his title is. He, along with the last named one there, Al Wise, come out of the research department of the International Union.

Q. Go ahead. A. Elvin Hughes is a representative of a local union, I think, in Ohio. He is also a general organizer. Weldon Matthews is executive assistant to the general president of the International Union. He is also the president of a freight local union out at Atlanta, Georgia.

Fern Melton is a general organizer, representative of the Western Conference of Teamsters.

Joe Morgan is a general organizer. He wasn't then but he is now area director of the Southern Conference and a vice president of the International Union.

Walter Shea is an assistant of the general president, Fitzsimmons.

B. M. Wagner is an officer of the joint council in Phoenix, Arizona.

[770] Q. All right, sir. Now, you say after that committee is selected and screens the proposals, then what happens? A. Now, I didn't say that that committee screens those proposals. I said that the total delegation from the local unions and the conferences screen proposals and make up what shall then be the proposal.

Q. And in turn select the committee that you have just identified? A. Right.

Q. Then what happens? A. Well, then contacts are made with the employer representatives and associations setting forth a time and place to meet to begin negotiations, which has to be mutually agreed to, and then preparations are made to actually draft the proposals, make copies of them sufficient for everyone, so that when the time comes to get into the meetings that actual copies of all powers of attorney from the unions' side can be given to all employers.

Efforts are made to ascertain from the employers who are going to be represented by any employer associations, and from all other employers, how they want to meet us in the negotiations.

Q. Now, to shortcut this a little bit, is there an exchange of powers of attorney, the employer power of attorney to the unions and the union power of attorney to the employer representative? **[771]** A. Right.

Q. After that's done, then does this committee meet with TEI designated employer representative? A. Yes.

Q. And simultaneously are there area committees of local unions designated negotiators for each area and employer designated representatives for each area? A. Yes. We have

a committee who meets jointly with the employers to discuss and try to negotiate aspects of, say, the National Master. Now, we at the same time have representatives of the employers and representatives of the unions representing the various areas to at the same time be trying to negotiate the supplement that applies to them.

Q. In the course of collective bargaining does there come a so-called National Master Umbrella Contract, various area contracts simultaneously negotiated? A. Yes, sir.

Q. Assume that this is done, what are the areas that are covered? A. The Southern Conference, the Central Conference, the Eastern Conference and the Western Conference are the principal supplements. However, there are other supplements involved called supplements or riders.

Q. For example. A. The New England Supplement or the New York Supplement or **[772]** the Ohio Rider.

Q. All right. Now, once these are negotiated to the satisfaction of the negotiating committees, then what happens? A. Well, simultaneously with this that we have named, negotiations—there is always negotiations going between the representatives of union negotiating committees and individual employers and groups of employees not represented by the named association.

Q. Are you saying that some employer will not give power of attorney? A. That's right.

Q. Some of them will want to sit on the sidelines and see what the powers of attorney negotiators are doing and others may insist on their own individual negotiations, is that right? A. That's right.

Q. All right. Go ahead. A. So after this is all done, when there is a meeting of minds at any point, then there is a meeting called of the full negotiating committee as far as the union is concerned to go over what has been generally agreed

to at this point to see if there is an approval of it. If there is not approval, then the committee goes back to attempt to negotiate until there is something they can approve. If there is approval, then all local unions are called in, or delegates from all local unions, to give to them what has been tentatively agreed to, and **[773]** see if they approve it. If they approve it, then at that point there is generally two things done. One, if they approve it, go back and call a meeting of all local unions and there is a recommendation from the negotiating committee that goes to the membership that it should be approved, or sometimes at that stage of it, they are not wholly in accord. and maybe they recommend to the membership that they turn it down. It depends on what the status of the approval is in the committee, but in any event, any negotiated agreement is tentative until it is ratified by majority of the affected employees involved.

The Court: Local unions?

A. (By the Witness) Of all local unions.

The Court: You mean one local could refuse to approve by majority vote and that would prevent the others from adopting?

A. (By the Witness) No, sir, that is not right. That is the reason I stated all unions—it takes a majority vote of all employees covered by that contract, so this means that one local union could vote it down, but all the rest of the local unions approved it, they were in majority, then all would be bound by it.

The Court: Vote as a whole.

A. (By the Witness) Right. Or on the other hand, one local union could approve it and a majority of the other local unions turn it down and it could be turned down.

[774] The Court: The cumulative total of all voting in all unions.

A. (By the witness) Yes, sir. Because it comes to the point now where many times instead of voting in the local union they take referendum secret ballot vote, sent to the membership. In the last two times I believe they have been counted by the Labor Department to make sure there was an actual secret ballot vote.

Q. (By Mr. Wells) By the United States Department of Labor? A. (By the witness) Yes.

Q. All right. Now, you have gotten to that point, and the membership has ratified it. Then what happens? A. Well, if they ratified it, then we see whether or not the employers' groups tell us that their governing body has ratified it. If they have, then there is a meeting to sign the agreements and get them into effect.

Q. All right. And are there meetings then held at local union levels between what parties with respect to the contracts? A. If it's approved, then all local unions are notified that it has not been ratified and approved, then each local union at that point makes copies of it and gets with the employer that they do business with to get that contract signed.

Q. And at that point do there come certain riders and supplemental agreements that may have merely local application? A. If there is conditions or work rules that are in the **[775]** locality alone, it's up to that local union and the individual employer to work those out, and if necessary, put them in writing.

Q. And then, is the signed contract similar to this that is in evidence, I believe it is Exhibit 203, signed between the local union affected and the company at the particular locality? A. Yes, sir.

Q. Now, this record shows that there are four bargaining units at least in the freight industry, over-the-road, city, garage, and office. Very briefly, would you outline the history of the development of those four separate bargaining unit. A. Well, back when I first got into the union industry in 1940, there

wasn't a lot of people organized. At that point a group of city employees of a freight company was organized in one instance and most other companies' city employees were not organized. Another company might have—we might have their road drivers organized, but no other employees. At this point, say, in Dallas, there was only one group of garage employees that was organized by the Teamsters, so in the process of people at that time trying to get organized, and we trying to help them, the union organized such people as came in and wanted to be organized. In some instances, this was both city and road drivers of a company. In other instances it was road drivers alone. In other instances it was city drivers **[776]** alone. In other instances it was clerks alone and in other instances it was garage employees alone. So whatever group came in, we would sign them up and attempt to get them organized.

Q. And on occasion did you go to the National Labor Relations Board for certification as the exclusive bargaining agent for a group of employees? A. In those days there were times when we forced into the Board, part of it because of the employers refusing to deal with us. We were, under the Act, able to go to the Board and secure representation from them in trying to set up some type of election, but they then controlled the unit that would be covered, so——

Mr. Wells: If we may shortcut this, Your Honor, I believe it's a matter of law and briefs before you with respect to the Board determination of bargaining units, and there are citations to you of Board decisions with respect to the Board definition of separate bargaining units.

The Court: I understand.

Q. (By Mr. Wells) Now, were there some instances back in those early days when road and city people were in the same unit, they all came to you and wanted to be organized together? A. (By the witness) Yes, sir.

Q. For example, Best Motor Lines, are you familiar with that situation? A. Best Motor Lines was one freight line that at that point **[777]** was organized both city and road, but at that time no clerks or garage mechanics, and with that company we had an agreement covering road and city drivers together.

Q. In a single unit. A. Yes.

Q. Now, what kind of experience did you have with that? A. The experience, a couple of years later the people told us that it was bad experience. The city portion of it said, well, these road drivers who have several years seniority are electing to drive on good runs over the road up in the central states, Indianapolis and Chicago, where they can make money in good weather. Then, when—in the wintertime the weather gets bad, they are coming south and bumping us off our jobs in order to take advantage of the good climate down south. So the city people at that point said we don't like this, we would prefer to separate the seniority of these two, and the outcome of the argument was that many road drivers agreed that they would rather have a separate seniority. That came in the point in the contract where there were a division. They separate those two into road and city units.

Q. Did race have anything to do with that? A. No, sir.

Q. All right. Now, has there been then for approximately how long, to your knowledge, has there been the basic division between road and city units? **[778]** A. In the freight, as you know it under this contract, since about the first part of 1947.

Now, we have other freight contracts, like with railroad transport companies that have from that time until now maintained one seniority for road and city drivers.

Q. The freight industry as such, leaving aside the rail related situation, which is a little different, I take it, has been divided at least since the late forties? A. Well, it's divided, Number One, between the road and city, but then as the garage people were organized they were designated as a separate unit, and negotiated separate agreements, which kept them separate from the city and the road, and as clerical groups were organized they were designated as separate units and were under contracts separate from the garage and the city and the road.

Q. All right. Now, with respect to the seniority practices within each bargaining unit, would you state for the record what those have been? A. The seniority provisions, Number One, before they were organized none of them had any seniority.

Q. Seniority is a creature of a contract, is it not? If an employee doesn't have either an individual contract or a collective contract providing for seniority, he is at the whim of the employer. A. Right. So therefore, our first concern always has been **[779]** when people are organized is to set up seniority protections. The union people have always tried to get the best seniority protection they could in a contract for themselves. So this has been generally that the seniority of the people involved go back to their last date of hire within that unit.

Now, whatever seniority was negotiated covering, say, city and road drivers, it at that time applied to those people at the domicile where they were located.

Q. Now, you're talking about at that time. What time? A. In the forties, for instance.

Q. And as I understand you, in the forties when all this began to evolve, this was long before there were any area or national agreements. A. Right. See, if we had the city people organized in Dallas and Houston of a company, at that point many of the companies didn't have their, what we call, own drivers operating over-the-road. They had what we call gypsies or independent owners who own their own equipment and did the over-the-road hauling for such companies that were unorganized.

Q. Then, you might organize the company's employees in Houston and in Dallas as separate units, and there would be a hiatus or a gap as far as the road was concerned organization-

wise. A. Right. Or if we organized the road drivers of a company, there was many times the city employees of the same company in **[780]** many cities were yet unorganized.

Q. Was it true at that point in history that many companies that had line hauls would contract out their city work? A. Contract out their city work?

Q. Yes. They would not have any city employees. They would only have road employees. A. Right.

Q. All right. Now, against that kind of an economic background, were the units set up either by NLRB or by the choice of the employees in the separate units as indicated? A. That is the way they were set up, and generally the reason for it.

Q. Now, you have indicated as of that time they were rather local and there was no—not much integration with respect to them, integration in the sense of integration of the units or working together of the units. How did that develop? A. Well, because take Dallas, they organized the employees that they represented of a company in Dallas now sometime different from that of a local unit in Houston would organize employees of the same company and negotiate a completely different contract, whatever they could with the company. So now, they both had separate seniority standings. The Dallas people had—whatever seniority they have applied only in Dallas and the seniority the people in Houston had applied only in Houston. So then, there came a time when the employer **[781]** said, well, business is such I want to shift my operations, I'm going to close down my operations, if it is road, in Houston and I can operate all the freight between Dallas and Houston from Dallas. If he did that, all the road drivers who were domiciled at Houston didn't have any jobs. The people in Dallas did all the work, even if it meant the employer hired other new people to go to work in Dallas, and put them on the seniority roster. The people may have worked for the company five or ten years in Houston, but they had no right to go to Dallas.

Q. All right. Now, in the late forties, what kind of operation was there from Dallas to Houston; how long did it take? A. In the late forties the highway and the equipment of the employers was such that generally it took around ten hours to go from Dallas to Houston.

Q. Could there be a turn around Dallas-Houston-Dallas? A. No, no possible way. That would be strictly a layover because the regulations of the Interstate Commerce Commission and the Railroad Commission state a driver could only be on duty a certain length of time before he had to take a rest.

Q. This would mean then freight going from Dallas would have to go by a driver who would then go to Houston and lay over how many hours before he could come back? A. This depends on the company and its freight operations, but generally speaking, he would leave Dallas sometime in the **[782]** early evening, like tonight, and arrive in Houston sometime the next morning, then he couldn't leave Houston until tomorrow night at about the same time, because it depended on the city trucks coming in off the streets late in the evening and the company being able to unload those city trucks for freight going toward Dallas, putting it on a truck so that this driver could return.

Q. In the meantime, some member of a Houston local would have initiated a trip in Houston and gone to Dallas and been in the same situation. A. Yes, right.

Q. With separate seniority lists, Houston and Dallas. A. Yes.

Q. All right. Now—— A. So that brought up the question under that contract, if there was a first load from Houston to Dallas, then under the Houston contract the Houston driver got to pull it. The Dallas driver who was there from Dallas couldn't pull until after the Houston driver had run.

Q. You mean a Dallas driver might have to sit around for two or three days before the Houston board was exhausted? A.

Until, under the provisions of the two contracts, he could return or it was exhausted.

Q. Then, was it practical at that time for a fellow to work part-time on the dock and work casual on the road? **[783]** A. It wasn't practical.

Q. Why not? A. Some companies did it, but generally most companies did not do it because then the regulations were in effect also that a man working on the road had to log hours on-duty driving and on duty otherwise and had to account for his rest periods in between time.

Q. Was there ICC regulations with respect to the number of hours you could drive and the number of hours you had to rest? A. Yes.

Q. And if a fellow was working on the dock for X number of hours, would it then be practical for him to get on a road truck and drive at night, or would he violate the government regulations? A. He had to do one of two things. He had to either, after working in the city, take off a certain number of hours for rest before he could pull the road trip, which delayed the road trip, or if the company permitted him to go ahead and pull on the road, then he would run out of hours and he would either have to be in violation to finish the run or else he would have to be tied up until his hours caught up to where he could continue the run.

Q. Was this one of the reasons that there was separation between city drivers and road drivers as of that time? A. Yes.

[784] Q. All right. Now, let's try to shortcut, if we can. I take it now following through on our example, Dallas, Houston, now there's a lot better roads, there's an interstate between Dallas and Houston, right? A. Yes.

Q. And instead of the ten hours in one direction, what does it take Dallas-Houston? A. Well, there is two things involved there. Not only is there an interstate straighter and better road,

but also the company has improved, much improved equipment. The result is the same company maybe has its drivers now operating turn-around runs from Dallas to Houston with one man making the round trip in less hours than it took in the forties to make it one way.

Q. Is a man able to meet Department of Transportation regulations and go Dallas-Houston-Dallas within the ten-hour limitation? A. Yes. Of course, another factor is that is under present day operations, generally speaking, the company will have that driver take a truckload from Dallas to Houston and drop it at the dock, pick up another loaded trailer, come back, where in the forties, generally speaking, that road driver loaded and unloaded his truck as he went down the road.

Q. Would it be practical in today's market when you've got better equipment and better roads for a city—for a company **[785]** to move people back and forth between city and road, or would there be still problems with respect to the ten-hour limitation and the rest period limitations that are required by the government?

Mr. Fenton: Your Honor, I object to the form of that question.

The Court: Well, might be suggestive of the answer, but I'm going to overrule and permit him to answer the question.

A. (By the witness) Well, the regulations, particularly from the Department of Transportation, the ICC and state regulatory bodies are more stringent now than they were then governing the hours of service.

Q. (By Mr. Wells) I don't want to lead you about it, Mr. Dixon. Just tell the Court what, if any, problem would result if an employer in Dallas-Houston attempted to utilize city drivers to handle road work, or road drivers to handle city work?

Mr. Fenton: Could I ask for a clarification? Is Counsel's question directed to the situation where a city driver would remain a regular city employee and pull road work on the side or move entirely from city to road?

The Court: I understood it to be merging the two units where you are just interchangeably in there rather than pulling extra, as you suggested, or rather than **[786]** keeping——

Mr. Wells: I'm going to ask it both ways.

The Court: Which one are we asking about first, now?

Mr. Wells: We are asking about merging so that fellow works part of the time in the city and part of the time on the road.

The Court: All on the same board?

Mr. Wells: Yes, sir.

A. (By the witness) Then the city man who has worked his shift in the city under the regulations would be unable to pull road trips without violating the regulations on his hours of service without taking a rest in between times.

Likewise, on your question, if the road driver has pulled a road trip and came in, he would have to take a rest period before he could perform a day's work in the city, or else there would be a violation.

The Court: Would there be any more risk involved than it would be when a road driver pulls a road job? He's got to take a rest period before he can pull another one, doesn't he?

A. (By the witness) That's right, but the big difference is that a lot of companies who have large operations may have shifts on the dock around the clock. Generally speaking, the freight industry has the city people working in the daytime, **[787]** because regardless of their shift around the clock, and in handling the freight the pickup and delivery drivers normally can only work in the daytime.

The Court: You're saying it's two different functions.

A. (By the witness) I'm saying it's two different functions. So the city people are working in the daytime and the road drivers generally are pulling this freight at night, although they also work in the daytime, but when you run them together, for the employer to have the necessary employees to work today and to have road drivers to work tonight, there is no eight hours in between that period, so if this city man is able to rest enough between the time he worked today, say, I got off at 2:00 this afternoon, then he can get eight hours rest, leave at 10:00 tonight, and by the time he pulled that road trip and come back he can't possibly get rest to work again in the city tomorrow, so the employer has to hire additional city people to be able to protect their job tomorrow in the city.

Q. (By Mr. Wells) Is there an economic basis for this, also? A. (By the witness) This is what many employers tell us. Of course, there is actual facts under the prescribed regulations, but the additional part from the employer's angle, they tell us, is that the city man who was worked, or the road driver who has worked, but particularly the city man, if they attempt **[788]** to use him out on the road that night without rest, he is very likely to get sleepy and run off the road and kill somebody including himself.

The Court: Let's go into the other side of the coin Counsel brought up. You indicated you were going to ask about both of them.

Mr. Wells: All right.

Q. (By Mr. Wells) Let's take the situation where there are the separate units, but a man is in a particular unit and wants to work casual in the other unit. Are there problems there? A. (By the witness) Wants to work casual in the other unit?

Q. Suppose Nat Wells is working from eight to four on the city and I need some more money and I want to work casual on the road. Are there problems in that? A. Well, the employer says there is problems. The real problem is simply that

the employer has a group of people that he feels are necessary within the confines of our contract to do his work. When he has those and has to pay health and welfare and pension and those things on the man for any day he works in the city, if he uses that man to go over and work casual on the road, then the time that he might work casual on the road takes him out of this work force and if while he's on that casual trip on the road the employer has an influx of unexpected freight, they need additional city people because **[789]** this man is now casually working on the road, they've got to go out and hire additional employees in the city in order to do this work. This is one of the things.

The Court: That would be similar to the problem created in the first example.

A. (By the witness) Yes, sir.

The Court: But that is not, as I understood it, not exactly the situation, Counsel. Maybe——

Mr. Fenton: I'll get into my things on cross.

The Court: All right. I think that may be best.

A. (By the witness) If I may, he asked me two parts of that, one on the causal and I have tried to answer it on the casual part. If the city people were actually used, forgetting, say, they are not going to be working for six months in the city, then it becomes a different question because they are available to, as a work force, pull casual on the road or anything else. In that case, from any viewpoint, I see no problem for the employer to use those people casual on the road.

The Court: Well, but if you're laid off for six months on the dock, the likelihood is there's not going to be any road work available for a casual, is there?

A. (By the witness) Doesn't follow at all.

The Court: It doesn't?

[790] A. (By the witness) The employer has full control over the number of road drivers that he uses.

The Court: I'm talking about business generated. Business falls off, he's not going to need any extra on the road.

A. (By the witness) This doesn't necessarily follow because most employers or a great majority of employers keep a goodly number of road drivers that are called extra drivers. They are extra drivers under our contract work strictly by seniority, so the top senior man on the extra board, if there is a run that comes up, he has his rest, he's available to go and he gets that run, even if he runs eight trips a week, while the bottom man on that extra board may be sitting there pulling two trips a week, one trip a week, or no trips, so in that category then, there might be extra trips or casual trips available on the road when the employers gets a large amount of business on Sunday night that has to go out Monday, so he needs maybe sometimes twenty extra road drivers for Monday night, but he has no other freight for such casual or extra drivers for the rest of the week. This doesn't necessarily depend on the number of people that he has in the city if the employer does what we call keep a normal compliment of city people working at all times. Of course, again, he has control over the number of city employees that he feels he needs on his regular work force and some employers have more than that **[791]** compliment and others what we call less.

The Court: All right. Thank you.

Q. (By Mr. Wells) Now, it's alleged in this complaint that certain types of driving are more desirable and others less desirable. What are the facts in that regard? A. (By the witness) The facts as related to me by our membership over these years are——

Mr. Fenton: Your Honor, I object to that on the ground its hearsay.

Mr. Wells: I think this man is qualified as an expert. He's been at it for a generation.

The Court: I think so. I'll overrule the objection.

Mr. Fenton: Is this going to be opinion testimony of this man as an expert, or is it going to be what was told him by someone else?

Mr. Wells: It's going to be this man's experience as an expert.

The Court: I think what he has observed in his position as an officer of the union and as an employee and member of these local unions—Of course, an expert can't help but take in some hearsay testimony. I'll permit it, so I'll overrule the objection. Let's hear what he has to say about it.

A. (By the witness) What our members say is along with **[792]** what my experience personally has been as a driver, that a man working for a company in the freight business has choices. Perhaps at the beginning he wants to either work on the road or he wants to work in the city, if he wants to work in the freight, and he looks at what is available, and the road driving portion of it is an operation that takes a driver from his home domicile to whatever point the company has operations. If it's on a single-man operation, generally speaking, he has to go to the other end and layover at least a day and come back, knowing that other things might enter into it to hold him at the other end for two or three days before he comes back. If he's on a sleeper operation, when he leaves home he may not get home for six to eight days, so this is an entirely different operation, not only from that, but because the road drivers have to start out on the bottom of the extra board and take such runs that are available. He has no guarantees. The only guarantee he has, if the employer calls him, puts him to work, then he has a guarantee for one day or for that trip.

On the other hand, the city operation is such like in the south we have an eight-hour daily guarantee of a five consecu-

tive day week, so he has a weekly guarantee until he is legitimately laid off under the contract. He can work his daily guarantee and barring overtime, for which he gets paid prime pay, he knows when he finishes and goes home he'll be at home with his family. He knows he has his weekends or his off- **[793]** days off at home. He knows what they will be and he can make other plans.

So our membership, it's two different worlds. The man makes his choice, then whether he would prefer, and many of our drivers prefer to work in the city under those types of conditions than to be road. It's people's preference to be on the road. They just like to go and stay rather than being tied down at home. So it's two different operations entirely as far as our members is concerned.

Q. Which is more desirable? A. It depends on the individual. We have had road drivers who worked on the road for two or three years and then said well, I just can't take this, I want to work in the city. They go to work in the city and work in the city the rest of their life and say I wouldn't go on the road at all. We've had city drivers who worked for awhile in the city and say, well, handling this freight is just too tough, if I can get on the road where I can drive and lay over and do what I want to do out on the road, well, I would prefer to do that, so it works both ways.

Q. You say you have had members that have been in one unit and go to the other unit. What has been the practice when that happens with respect to the seniority? A. Well, of course, the answer is simply this: We have got a lot of companies under contract, so it happens in both ways, **[794]** but there's been instances where a company let a man who worked on the road for them go to work in the city, and of course, when he goes to work in the city he would go to work as a new hire in the city for bid purposes, but retain his company seniority as far as fringe benefits, or vice versa, from the city to the road, but in other cases a man who has worked for T.I.M.E. on the road

for five years elects to go to work in the city, so he goes over to Strickland and hires out as a city employee and stays in the city from now on.

Q. In either event, his bid and layoff seniority is computed from what time? A. From the time of his last hire into that unit.

Q. Is that true universally and without regard to any other consideration? A. Well, no. It is true in the man voluntarily moving from one place to another. In the instances where the employer has changes of operation——

Q. We will get to changes of operation in a moment. Is it true with respect to all employees covered by the contract, whether they are white, black, brown or whatever? A. Yes.

Q. And have you found that there has been some mobility between these two units in that the fact that a fellow loses some seniority, some bid seniority in going from one unit to the other, has not or has it, or has it not erected a barrier **[795]** between those two units as far as mobility is concerned? A. He has erected no barrier if the man involved wants to make it move, because even in instances where the company has a policy not to hire from one unit to the other, such people can easily make contact with and go to work for another company which they do all the time in another unit.

Mr. Wells: In that connection, if Your Honor please, we call your attention to the stipulation in the pre-trial order that that is no such barrier insofar as how mobility is exercises as far as T.I.M.E.-DC is concerned.

Q. (By Mr. Wells) Now, very briefly, there has been conversation in this record with respect to change of operations. I believe you're already testified about the improvement in highways and in equipment and so on. And the record further shows the change in the economic size of the various employers in the industry. Does this make necessary changes of operations with respect to domicile of employees or runs they take, etc.?

A. (By the witness) Well, according to the employer, it makes it necessary for him to change, to have a more efficient operation, or to operate the business the way he wants to and since he takes that position and makes moves, we negotiated in contracts some provisions to give some protection to our membership who would be affected by any such moves, and as contract by contract goes along, we have, we think, improved those provisions in the contract as far as we could to the **[796]** present time to protect people who are affected and move by such changes.

Q. I believe you indicated earlier that in the old days, Dallas to Houston, there would become conflicts between the Dallas 745 drivers and the 968 drivers in Houston, and now taking the geographic area, longer than that, say, Houston to Memphis within the Southern Conference, what happens if drivers domiciled in Memphis, if his employer figures he can do a better job if he moves them to Dallas or Houston? A. Well, over the period of time it has developed from a point where back in the forties the employer of necessity had, say, road drivers domiciled every hundred and fifty to two hundred miles in order to be able to handle the business. Now, with the improved highways and improved equipment, the driver under the sixty-hour rule of the interstate of the Interstate Commerce Commission can run long distances up to, here in the south and parts of the west, particularly they can run in excess of five hundred miles within their hours of service. So this has caused the employer to completely shut down his domiciled road drivers for the hundred and fifty to two hundred miles, three hundred miles, and so forth, and between Dallas and Memphis where originally he had drivers domiciled at Dallas, Texas, Little Rock and Memphis, now he has people domiciled only at either Dallas or Memphis handling all operations between those points.

Q. Now, briefly, how is that change of operations handled **[797]** with respect to the union end of it? There is testimony already in this record as to what the employer does with respect

to making the proposal and circulating it to the affected local unions. A. Well, the various conferences have their own rules in connection with it, but all of them have to follow the provisions in the contract as to change of operation and what happens, and so the first thing that happens is the employer makes his proposal and gives copies of it to the effected unions, they go over it and most times, say, in the south, local unions involved will call meetings of the members who work for that company under it and say here's what the employer proposed to do, and get their reaction to it. Then in the south, we call what we call an exploratory meeting. We call a meeting of those involved local unions at which time jointly those affected unions discuss the proposed change and advise their objections, or what they think ought to be done, or not done on it. All of this is done in connection with our position of protecting those people affected insofar as their seniority is concerned in any proposed change.

It is for the same reason that in the south we have negotiated the modified seniority provisions in the road where the employer was moving these people, or closing down domiciles, eventually our people negotiated in a contract a provision for modified seniority, so that if an employer did away with the **[798]** say, in Houston and was going to operate the same business between Dallas and Fort Worth out of Dallas, these road drivers could then take their seniority with them and go to Dallas.

Well, by the same reasoning, in the change of operations, the protection is there to provide the authority to the change of operations committee to listen at what change the company is going to make and ascertain what people are affected and to what degree so that they can make the determination what seniority these people will have to follow that work.

Q. After you have had this exploratory meeting and found out what positions of the various affected local unions are, what happens? A. Then—well, the change of operation is set up to be heard. It is set up by—if the change is wholly, say, within

the Southern Conference, the Southern Conference jointly with the employer sets it on their agenda and notify the employer involved and the unions involved to be a specified time and place for hearing on the change of operations.

Q. Who hears it? A. A committee composed of equal representatives of the union and the employer.

Q. How are the union representatives selected? A. They are selected by the unions involved. Not involved in this change, but by the unions involved in the contract, by appointing grievance and change operations committees to hear **[799]** all such cases for that area.

Q. All right. Then, the presentation is made by the employers, I believe the record shows objections or acquiescences or comments are made by the interested party, and decision comes forth. A. If they can agree on a decision, it comes.

Q. If they cannot agree to a decision, then what happens? A. Then it would be deadlocked and at that point more than one thing can happen. Maybe the employer is saying that the —at some point in time the employer will say, well, how about me re-arranging my proposal and bring it back in and he is told yes, you can do that, so he re-arranges it, puts it back on the agenda for rehearing if the employer thinks that he has a basis for bringing it back because of new evidence or otherwise.

Q. And assuming he doesn't do that, and there is a deadlock, what happens? Is there an appellant procedure? A. There is no appellant procedure if, as I stated it, it was wholly within the Southern Conference,

Now, if the dead lock affected the employer-unions in another area, then there would be a place. You would have to take it to the next committee of the multi-conference, or the national committee.

Q. Just explain that briefly. Assume it is between Dallas and Los Angeles for example. **[800]** A. If it's a change of operations,

or a grievance that involves two conferences, each conference, meaning the union's side of it and the employer's side of it, appoint equal representatives to set with equal representation from the other conference to act as a multi-conference committee with authority to hear such case and make a decision on it, which is final and binding.

Q. And the same procedure, I take it? A. Yes, sir.

Q. Then, is there an appeal from that? A. There is no appeal if there is a decision made.

Q. And if there is a deadlock. A. If there's a deadlock and it involves both conferences and it has been heard by the multi-conference, then that would settle it unless it was based under the interpretative clause of the Master Contract to take it to the National Committee.

Q. Is it customary in the practice by either a conference committee, as the case may be, or the multi-conference committee, to make seniority decisions with respect to changes of operation? A. Yes.

Q. And that can be either on a dovetail or end-to-end or some modification, depending on the particular circumstances involved is that correct? A. The contract we have negotiated has broad outlines **[801]** intended to set up general rules of handling mergers and certain types of changes, but the language of the contract then specifically says that when the parties, knowing that circumstances always arise in changes that may be other than the general provisions, it gives full authority to a change of operations committee to rule on what the seniority of the affected people shall be irregardless of other lines.

Q. All right, sir. Now, back to the separate unit for a moment. Are you familiar with the phrase "Line of progression"? A. Line of progression. I haven't heard it used a great deal, but I think I realize what the term generally means.

Q. I use it for these questions in the sense of an industrial plant where a man enters at a low-grade job and through a line of progression ends up at a higher grade. Do you understand that? A. Yes.

Q. Now, is there any place in the experience of the Teamsters, or in the trucking industry where that concept of line of progression is applicable? A. Well, we have contracts in the garage. We have contracts covering the city people. We have contracts covering the clerical people where that concept always applies, meaning that——

Q. For example, take a garage. A. Meaning that any contract such as the garage, where we **[802]** have more than one classification of work and different rates of pay, different conditions applying to each job, that the seniority, we say, of the people involved shall apply, meaning that whatever these people involved think may be better in operations under that contract, they should have a right to go to, so in the garage agreement, depending on what the garage agreement says is the top rate of pay. Sometimes it's a head mechanic, sometimes it's an electrician or specialized job. If it carries the top rate of pay, then if there is an employee that works under that and his seniority, and is qualied to do the work, then he may migrate or bid on that other paying job.

Q. If I understand you then, within the garage agreement as presently constituted, there could be a line of progression from the low-entry level up to a skilled craftsman. A. If he has seniority, he can go there at any time if he's qualified to do the work.

Q. All right. Similarly, in the office are there various lines of progression? A. Yes. They are all under one seniority roster, and the seniority provisions permit any employee to bid on any job if they are qualified, anl have enough seniority, they can get it.

Q. And within the city unit, are there lines of progression under some contracts? A. Well, going back to what we talked about in the forties, **[803]** we specifically had classifications of dock workers, forklift operators, drivers and checkers, with different rates of pay. Now, the present contract still provides for different classifications, and some different rates of pay, and yes, the seniority provisions are the same. Any employee under that contract, if he has seniority and is qualified, can bid on any job and get it, but the important thing is there that too many of the companies, even though they have the classifications, they will pay the employees one rate of pay so that they get the benefits of using an employee to do any work and don't have to make a change in his rate schedule, but he still has that contract. He can still bid on the classification.

Q. All right. I take it then that there are lines of progression within units as you have indicated in your testimony. A. Yes.

Q. In your experience, has there been any line of progression between units in this industry? A. No. Now, let me amplify that to this extent: The contracts make provision that if you go to work under the garage agreement, your seniority date is as of the first date you go to work there. It has nothing to do with you having to work for the clerical part of it as a cashier or something for two or three or five years or work on the road.

On the other hand, as a general attitude, the Teamsters' position here is that if an employer elects, say, from the **[804]** road, because that is involved here, if on the road he elects to take some city people who work for him and give them opportunities to work on the road, of course, he is going to give them seniority as of the date they start to work, but if he elects to use people out of the city, we simply say to him, if you're going to use them, then use them by seniority, out of those qualified people who can do it, use the top seniority man and give him an opportunity to move.

Q. That's a matter of selection for movement between units rather than a line of progression between units. A. He has no right to move from one to the other. The clerk has no right to go to the garage. The road has no right to go to the city. The city has no right to go to the road.

The Court: Not as a matter of right, but he could as a matter of choice if they were available.

A. (By the witness) Yes, sir. Oh, there's nothing in either contract that prevents an employee working for the same company when he sees a vacancy under one of the other contracts, saying to the employer. I want to go to work there and he says fine, you're qualified, come on over. He can do that.

The Court: He can't bump somebody out.

A. (By the witness) He can't bump anybody. When he moves under our contract, if the garage man, who is also on the trucks and so forth, he's qualified on a piece of equipment, if the **[805]** company says yes, you have got that vacancy on the road, he can work as a garage man for five years and the day he goes to work on the road, he starts as a new man for bid purposes. He takes all the seniority from the garage for fringe benefits.

The Court: He loses his seniority for bid purposes in the garage.

A. (By the witness) Yes.

Q. (By Mr. Wells) Is that true without regard to race? A. (By the witness) That is true without regard to race or anything except the fact that he has worked for the employer.

The Court: Sort of have to let go of one before he can grab onto the other one.

A. (By the witness) If you take hold of the second one, then you have to give up the first one. The contract don't say that you have to, as some of them say, quit the city to go to work over here, but road contracts say if you come to work here,

then you have to give up seniority back there where you came from.

Mr. Wells: If Your Honor please, I believe this record shows at least in Memphis that there is some kind of a rider consistent with the system generally whereby if the employer selects people in one unit on a seniority basis and they desire to go to another unit, they have what we call a retreat right for, I think, a thirty-day period. You don't have to let go of one trapeze before you can catch the other one.

[806] The Court: Except for thirty days. After that you do.

Mr. Wells: Right.

The Court: You can't have your position in two units.

Mr. Wells: Right.

A. (By the witness) That's right.

Q. (By Mr. Wells) Now, you have indicated that is without regard to race. What has been your experience with respect to treatment of persons of various races within the Teamsters Union; what was the situation back in the early forties when you got in 745? A. (By the witness) Well, when I first got in the union the situation was, as it was then in most of the south, if I—at first I didn't own a car, so I had to ride the bus, or streetcar to go back and forth to work myself, and I sat in the front of the bus by law and the black had to sit in the back.

By the same token, when I first got in the union and went to the union hall, why, I noticed that the whites sat in the front and the blacks sat behind. One of my first jobs was trying to organize and I discovered that the employers in my mind took advantage of the situation to the extent that some of them would, when we organized, some people would stay in the freight at one company, or in the warehouses, particularly, **[807]** and got some little better wages and conditions, then the employer sought to hire blacks and put them to work as non-union because they would put them to work cheaper. So we particularly

tried to go out and see if those people wanted to get organized so that we could bring them up to the same level so that there wouldn't be unfair competitive situations between the workers.

Now, the people we were able to organize who were black and came into the union—when I first got to be a principal officer of the union in '47, one of the first things I did was to tell our membership that as long as people were organized into our union and had contracts or came to our union meetings, that all people would have to be treated alike. That included seating or voting or anything else in our union, so that's the way it was from that point forward.

By the same token, when I first got in the union and went to a group of Mexicans and service people who worked for Texas Pacific Railroad where I originally came from, they had been under another union agreement, and they elected to come over to the Teamsters and see if they could improve their lot. The first thing we did when we negotiated that contract was to take out all bars of demarcation, or whatever you want to call it, between the classifications so that our seniority provisions would apply to anyone who worked under that agreement.

So this is what we have always tried to do since then.

[808] Q. With respect to participation in union affairs, is there any difference based on race or color or national origin? A. There is no difference at all as far as our policy or our attempted actions are concerned, and if there are any such instances, it is because of still some individuals in some isolated places.

Q. Now, that's true within your internals of the union. With respect to the application of collective bargaining contacts, is there any difference between black, white, brown or racial origin? A. Not a bit.

Q. Do your unions contain various ethnic groups and persons of various color? A. Yes.

Q. And do people who work in similar jobs have similar conditions and similar pay regardless of that? A. Yes, sir.

Q. Has your union, or at least has it at the international level, has the union taken positions with respect to legislative matters with respect to race and civil rights? A. Our union has on a national and on an area basis, and mostly on a local union basis, taken action on that level to try to help the situation as far as the minority groups are concerned, to the extent that quite some time ago our international union and another, which is known as the other **[809]** largest international union other than the Teamsters, joined together in a program and devoted huge sums of money and manpower in an effort to try to help socially the economic plight of the minority groups across this country.

Q. You referred to it as what? A. What we call the Alliance for Labor Action, ALA, sponsored by the United Automobile Workers and Teamsters.

Q. Briefly, what was done there? A. The two unions developed a policy of cooperation and jointly put in sums of money to provide manpower and actual funds and money for minority groups to set up programs in localities all across the country, such as Atlanta, Georgia, Mississippi, Louisiana, Los Angeles, and Watts to try to get a better picture of those people. We did this in conjunction with arms of those minority groups. We didn't just do it ourselves. We went in to develop those groups themselves to help themselves, and provided manpower and money to assist them.

Mr. Wells: If Your Honor please, I believe I am through with this witness. I'd like to have a moment.

The Court: Why don't we take a recess, then if you have got more questions, finish up with him and we'll give counsel for the other parties time to get ready for cross-examination. **[810]** Let's stand in recess until 10:45.

(Recess.)

The Court: All right, Mr. Dixon, would you take the stand again, please, sir.

Direct Examination (Resumed)

By Mr. Wells

Q. Mr. Dixon, there is an Article 38, a part of the National Master Freight Agreement, applicable to each of the four bargaining units prohibiting discrimination because of race, color or national origin.

Briefly tell the Court how that provision could be implemented by any employee in the freight industry who felt that there had been such discrimination. A. This is a basic reason why any employee can file a grievance and carry it through the grievance machinery to get a decision if he feels like the company has violated that provision of the contract, or others related to it.

Q. Briefly, what is that grievance procedure? It's set out in detail in the contract itself, but just summarize it for the Court. A. It's a procedure that provides that if there is any dispute between the employees as against the company, he can take it up with the company himself; he can have stewards or agents of the union to represent him and failure to settle it, **[811]** it can be filed as a grievance to a grievance committee set up under the contracts who have authority to hear the evidence in the case and make a decision that is final and binding on the parties.

Q. And is that basically set up the same way as a change of operations committees that you have testified about? A. Yes.

Q. Do you meet in such committees periodically? A. Different areas meet at different periods, but yes, they all meet periodically, either on a monthy basis, two months, three months or however it's set up. Likewise, the areas, depending on their needs, set up city grievance committees, state grievance committees or multi-grievance committees.

Q. In the south, what is the fact? A. In the south it is set up into what we call multi-state area grievance committees so that all grievances are not handled and settled locally between

the local union and the employer. It's heard by a committee once every month. They meet and these build up to a total of around a thousand or twelve hundred grievances a year that are heard by that committee. If they are not settled, and if they are deadlocked at that level, they are appealed to what is called the southern conference area appeals committee, which meets every three months normally to hear any deadlocked cases that have been left over in the lower level.

[812] Q. Is that procedure available to any employee without reference to color or race in the freight industry who wishes to take advantage of it? A. Yes, it is.

Q. Is it a normal remedy in the situation where it is found that a violation of the contract has denied employment or has denied a run or has denied wages to a person, that the committee will order employment in the proper spot and back pay? A. Including seniority if it's found that the employer should have put a man to work at a certain time and failed to give him his rights, full seniority. They will make a ruling on that also.

Mr. Wells: That's all. Thank you very much.

Cross-Examination

By Mr. Fenton

Q. Mr. Dixon, in your direct testimony you described the organization of the Teamsters which includes the locals, joint councils, the area conferences—well, pardon me, the state conference, and then the area conferences, and of course, the International itself.

Now, is this organization all provided for in the constitution of the International? A. Is it all provided for in the International constitution?

[813] Q. Right. A. Yes.

Q. Specifically along that line, you mentioned that if there are, I believe two or three or more locals within a city, that it

is required that these locals form a joint council. Now, is that requirement set out in the constitution? A. Yes.

Q. So if the local wanted to—let's assume that a local in the city where there are two or three or more other locals, that local has no choice by itself as to whether or not it desires to join the joint council. It is required to join, isn't that right? A. If there is a joint council charter issued, then any local union within the area covered by the joint council would belong to the joint council, yes.

Q. Who issues that charter? A. The International Union.

Q. Now, in describing your employment history with both employers and the union, I believe you testified that at some time in 1947 that you were appointed business agent for Local 745 when it was under trusteeship, is that correct? A. No. I said I was appointed a business agent for 745 in early '46.

Q. I'm sorry. '46. Who appointed you? A. It was not under trusteeship.

[814] Q. Well, were you appointed at any time when the local was under trusteeship? A. Yes.

Q. When was that, sir? A. That was in late '47.

Q. Which local was that? A. That was in Local 745 in that instance.

Q. All right, sir. When you were appointed to that office, when Local 745 was under trusteeship, who appointed you? A. The trustee of that local union.

Q. How was that trustee chosen? A. The trustee is appointed by the general president of the International Union as required under the constitution of such International Union.

Q. Yes. I believe you also testified in describing the conventions which occur with respect to the International, that some locals are entitled to more delegates than others. Is that correct?

A. Well, I said that they were entitled to delegates. Each local union who has a charter is entitled to a minimum number of delegates, and from that point on the constitution spells out the ratio of membership needed to increase their delegates on up to whatever membership they have.

Q. So the more membership you have the more delegates you get, is that right? **[815]** A. Yes.

Q. And that is provided for in the International constitution? A. Yes. And the constitution provisions for that, of course, is put in there by the delegates from the local unions themselves. Now, you also testified as to four bargaining units which exist in the Teamsters union, the over-the-road, the city and the garage and the office.

Q. Now, although there are four separate bargaining units, isn't there one union negotiating committee for all of these separate unions? A. Well, I testified that there were four units involved in this case, in this part of the freight industry. I didn't say that this was the only unit involved in the Teamsters.

Q. Right. But with respect to the negotiating committee for the union, isn't that committee the same one for all of the different units? A. It is at the present time, but it hasn't always been so.

Q. So—— A. Just as it hasn't always been so that we had one National Master Agreement.

Q. Let me refer you to Plaintiff's Exhibit 203(a), Mr. Dixon. This exhibit contains the collective bargaining agreement on the Southern Conference, and let's take a look first at the Southern Conference Area Over-The-Road Supplemental Agreement. **[816]** Now, the negotiating committee for the Teamsters there is Mr. Miller and the others that are listed under there, isn't that correct? A. Well, there's a list of negotiating committees listed under the Southern Conference of Teamsters.

Q. Right. And the National Over-The-Road and the City Cartage Policy and Negotiating Committee. You see that there? A. Yes.

Q. And you went through in your direct testimony and described where these various individuals on the National Committee came from, did you not? A. Yes.

Q. All right. Now, this committee, of course, negotiates for the employees, does it not? A. Well, the union committee negotiates for the employees.

Q. Right. And with respect to the local freight 480 pickup and delivery supplement——

The Court: That would be the city, would it not?

Mr. Fenton: That is the city, correct.

Q. (By Mr. Fenton) Now, turning to the negotiating committee for that supplement, which is on Page 159, is that the same union committee? A. (By the witness) Yes.

The Court: Same members?

[817] A. (By the witness) Well, they may not all be the same members. I haven't checked one list against the other.

The Court: Well, Counsel is apparently checking.

Mr. Fenton: Your Honor, I was referring specifically to the National Committee here.

The Court: Yes, sir. That is the same membership.

Mr. Fenton: My check shows the same membership.

Q. (By Mr. Fenton) Now, then, referring on down to the garage supplement and again to the committee, the composition of the National Committee for the union on this, is that the same National Committee? A. (By the witness) Yes, it's the same committee. The answer to your question is that these lists are made up of those negotiating committees. Now, out of that number of us who were on the negotiating committees, a part

of us may have been dealing with the, like, committee of employers as a subcommittee to negotiate the clerks, while another part of us were negotiating garage and so forth, but we were all a committee for the union.

Q. When you say you all came from—I'm sorry, I didn't understand the first part of your answer. A. Well, the union selected as local group of us as **[818]** negotiating committee members to negotiate with the employers. They were attempting to negotiate a national agreement and all of these supplements. In doing that we had a portion of us meeting with a number of the employers to negotiate the National Master part and some of the rest of us were negotiating over-the-road parts and some of the rest of us were negotiating the city part and some of the rest of us were negotiating the clerical and still another part negotiating the garage part.

Q. Was the overall committee, out of which the separate committees were chosen, was that performed first? A. Yes.

Q. Mr. Dixon, I hand you again a copy of Plaintiff's Exhibit 203(a), and refer you to the National Master Freight Agreement in this exhibit and to Article 2, Section 4. This says that the employees, unions, employers and associations covered under this Master Agreement and the various supplements thereto shall constitute one bargaining unit, is that correct? A. Yes.

Q. Now, you were also asked some questions by Mr. Wells with respect to the situation of a company using its city drivers to make part-time or casual road trips, and I believe you testified that the company could run into some problems if it did this; that there are certain requirements by the Interstate Commerce Commission, and I suppose by the State Railroad Commission, that an employee can only work a certain **[819]** number of hours, then he has to take a rest.

Now, let me give you the situation of a city driver giving up his city work and transferring to the road and becoming a permanent road driver. In other words, this is the only kind of

work he is doing now, road-driving work. Now, would he run into the same problem in that situation? A. If he started to work on the road and didn't have any other job, he would be no different than any other new hire of the employer.

Q. So these hour problems that you discussed in your earlier answers would not exist in the situation I have given you, is that correct? A. Like I said, it would apply to him the same way it would apply to the road driver who wants to go to the city. As long as you don't try to do both of them at the same time, he has no problem.

Q. Right. So if the driver, city driver becomes a road driver and road driving is all he is doing now, these hour problems and so on no longer exist. A. As I said, he is the same as any other new hire under those conditions.

Q. If he is the same as any other new hire, do those problems exist? A. As far as I know, there's no problem for a new hire other than the requirements of the company and regulations he **[820]** has to work under.

Q. Now, I believe you testified that your association with the union started in 1944. Is that correct? A. No, sir.

Q. At least you were—well, what was the first year, '45? A. I started to work driving in 1940. The question that you refer to that I answered was when I first joined and started participating in the activities of the union, which was in 1944.

Q. 1944, sir? A. Yes, sir.

Q. Do you recall any black road drivers in Dallas at that time? A. At Dallas?

Q. Yes. A. Yes, sir.

Q. How many? A. I don't know the number.

Q. Do you know what companies they worked for? A. No, sir.

Q. What would you say the number was in relation to the white road drivers? A. I'm sure it was real low. Another way of saying it, my opinion from my experience is that it was real low.

[821] Q. Do you know, Mr. Dixon, whether or not a man who starts out as a new hire for a trucking company always has the choice as to what job he is going to get? A. No. It depends on what job is available and what his qualifications are.

Q. Well, are you aware that in all instances that even if jobs are available, and that a man is qualified for those jobs, that he is always going to get that job? A. No, sir, I have known of many people, including a brother of mine that tried to get a job but he couldn't get it and he thought he was qualified.

Q. So we can't really say that a man always has the choice as to what job he is going to get, can we? A. No. But he has his choice of the ones he wants to try to get, or apply for.

Q. He can apply for a job? A. Yes.

Q. But he can't be sure he's going to get that job. A. No. Only the employer can answer that part.

Q. To your knowledge, Mr. Dixon, has the Teamsters ever filed a grievance on behalf of a black applicant who was not hired as a road driver? A. I don't know of any instance where a black applicant for a road drivers job has filed a grievance asking that it be carried through the grievance machinery. I'm not saying it **[822]** hasn't happened. I don't personally know of any instance where it has happened.

Q. Now, I believe you testified that with respect to the garage agreement that any employee covered by that agreement can now go to any other job covered by the agreement if he is qualified to so move, is that correct? A. In the garage agreement?

Q. Right. A. Speaking of the garage agreement under this National Master, that's correct.

Q. Are you referring to all the garage agreements? A. The question was propounded to me based on the contract in effect here, which is the Southern Conference Supplement to the National Master.

Q. So your testimony was in respect to the Southern Supplement Garage Agreement, is that correct? A. Well, in further answer to your question, the first part I answered on it was referring to the—a company that is not under this agreement, but is under a separate agreement. That is the Texas and Pacific Motor Transport System, and its garage employees.

Q. But what I'm trying to find out was—Well, first let me get your testimony with respect to the garage agreement clear.

Wasn't your testimony that a man covered under the **[823]** garage agreement can now move to another classification covered under that same agreement if he is qualified and keep all his seniority rights. A. Under this garage agreement in evidence here, which is the freight garage supplement in the National Master, he can do that if he's qualified and has the seniority.

Q. Does this apply to all garage supplements or just the Southern Conference one? A. This applies to the Southern Conference Supplement.

Q. Are you familiar with whether or not that's true with respect to the other supplements, the other garage supplements? A. No, I don't personally know what would be in a supplement.

Q. Let's talk about the Southern Supplement now, the Southern Garage Supplement. And that supplement became effective, I believe, April 1st, 1970, right along with the National Master Freight. A. Well, the present one became effective then. We have had an area garage agreement in the south and in areas of the south for several years, not just the three-year period.

Q. Right. Let's go back and discuss those prior garage agreements for a moment. Under prior garage supplements, could a man covered by that supplement move from one job classification and keep his seniority?

Mr. Wells: Object to the question unless **[824]** it's pinpointed as to a specific agreement.

The Court: Well, I think they are talking about one here. If the witness has any question about the agreement he's talking about, he might inquire of Counsel, but you know what agreement he's talking about.

A. (By the witness) I only propose to answer it for the agreement I know about, and if his question relates to this supplement and its beginning up until now, the answer is yes. His question said other garage agreements, and there are other garage agreements in many localities, including the south, that are not covered under power of attorney or the National Master. I have no personal knowledge of that except I can go to my records and see what contract you're talking about.

Q. (By Mr. Fenton) Well, do you know whether or not that —Let me rephrase that question.

We received answers to interrogatories from the company, and in the interrogatories we asked the company whether they interpret any provisions of any present or past collective bargaining agreements as prohibiting servicemen at their Nashville terminal from moving to the position of mechanic and carrying with them their terminal seniority, and their answer was yes as to the past agreements, no to the present agreement, and of course, the present agreement which covers servicemen at that facility is the Southern Garage Supplement to which you have been testifying. **[825]** A. (By the witness) No, sir.

Q. Pardon me? A. The answer to that has to be no, because you are proposing two questions in the question you propounded.

Q. I haven't propounded my question to you yet, sir. I am still—I am just trying to familiarize you with why I am asking this question.

Now, the agreement that presently covers servicemen of the Nashville facility is the Southern Supplement, which became effective April 1st, 1970. Now, prior to that time, the agreement that covered garagemen at that facility was the Southeastern Area Garage Agreement covering mechanics and servicemen.

Now, my question to you is, if you know, under the Southeastern Area Supplement, which was in effect from 1967 until 1970, could an employee covered by that agreement move from his present classification to another classification and keep his seniority? A. Are you speaking of those employees covered by that Southeastern Area Teamsters Agreement, or are you talking——

Q. Yes. A. ——also about the employees working for the company who worked for another union or worked in another union?

Q. I'm talking about employees working for the company at the Nashville facility who were covered by the Southeastern **[826]** Supplement at that time, during the period, 1967 through 19—through March 31, 1970? A. My knowledge goes to this much: That during that period in the southeast, what is called the Southeastern Area Garage Agreement wasn't a uniform garage agreement in all of the places that it covered. There was different provisions for wage rate and certain conditions in many of the places. Now, further, my knowledge is that in Nashville where you speak of, as in some other places, the Teamsters don't represent all of the garage employees. When that happens, a proportion of them belong to another union, then that portion is controlled by whatever agreement that union has with the employer.

Now, so far as I have known, any employee represented by the Teamsters under the Southeastern Area Agreement would

have been able to use their seniority in any classification within their area of the agreement.

Q. Is it your understanding that under that Southeastern Conference that assuming those employees were represented by the Teamsters, that under that Southeastern Supplement they could take their seniority with them from one classification to another; that is, their bidding seniority or do you know? A. Well, as I said, only to my knowledge, normally contracts that are negotiated on that basis are sent to the office for approval. Now, we read them over and approve them as to form. We don't tell the local union that you can agree **[827]** to this or you can't unless, as provided in the constitution, there is things we find in there that would seriously jeopardize the interest of a sister local union in the area. So on that basis I have looked over almost every agreement that has ever come into the office, and there's nothing in my recollection at this moment that says that we had any garage employees that we represented in a contract that could not utilize their seniority on any classification that we represented.

Q. That goes back—— A. But I wouldn't say that it wasn't done. I just simply say I don't recall at any instances where we had it.

Q. Well, your answer would be you're not sure. A. I wouldn't be positive of that particular one because I don't have the contract in front of me.

Q. Very well. To your knowledge, Mr. Dixon, is the relationship which exists between the Teamsters International and T.I.M.E.-DC the same relationship which exists between the International and Roadway? A. Now, is your question between the International and those companies in both instances, or did you say the union on one hand and the International on the other?

Q. The International in both instances. A. I can't speak for what the position of the International Union is on it.

Q. Well, what about the union? **[828]** A. I can only speak for that part of the union that I represent.

Q. Is the contractural relationship which exists between the Teamsters and T.I.M.E.-DC basically the same as that which exists between the Teamsters and Roadway?

Mr. Wells: To which we object. Counsel is apparently seeking some testimony in derogation of the stipulation as to the contracts between local unions and employers. Now, he has stipulated to that fact and it is in the pre-trial order and I think he's bound by it.

The Court: Counsel, what is your reply to that? What is your purpose of this question?

Mr. Fenton: My purpose is to ask this witness whether to his knowledge the overall contractural relationship between the Teamsters Union is the same, the overall contractural relationship between those unions and T.I.M.E.-DC is the same overall relationship which exists between the Teamsters and Roadway, if he knows.

The Court: I'll permit him to answer. Overrule the objection. The stipulation, of course——

A. (By the witness) I would want to know what you mean by overall relationship.

Q. (By Mr. Fenton) Are the basic contractural relationships the same? A. (By the witness) When our membership who worked for **[829]** Roadway make proposals for what they want in their agreement, they are normally sitting in a meeting where the employees of T.I.M.E. in that category I work are also seated, and discussing it in that relationship. It may be that some T.I.M.E. employees will say, well, we propose certain things in the contract. Now, the Roadway employees knowing that we are talking about negotiating the same things for both companies, well, he will say we think we ought to have something. Now, between them, they will generally jointly agree,

well, let's go for this because we can't have everything each one of us wants. So to that extent, the relationship, I would say, is the same since it is the same industry.

Q. Now, you were asked some questions about Article 38 in the National Master Freight Agreement, Mr. Dixon, and you were referred specifically to the most recent National Master Freight Agreement, which is the one that became effective April 1st, 1970.

Was there an Article 38 or any provisions similar to it in any National Master Freight Agreement prior to April 1st, 1970? A. There is provisions in prior agreements, meaning the area agreements and/or National Masters that preceded the present one that dealt with this subject. There wasn't the identical Article 38 that is in the present agreement but Article 3, for instance, and Article 41—Article 3 meaning **[830]** National Master, Article 41 of the supplements dealt with provisions where members, meaning employees of the company, can file grievances if the Company discriminates against union membership, or sex, to evade or uses a subterfuge to get around provisions of the contract.

Q. Mr. Dixon, I hand you what has been marked as Plaintiff's Exhibit 2 and this includes a copy of the National Master Freight Agreement, which was in effect from July 1st, 1964 through March 31, 1967, and do you see an Article 38 in that National Master Freight Agreement? A. I haven't looked yet. This is the National Master and Local 490.

Q. Right. And the National Master Freight is set out in the first part of it. A. First, I don't know where Local 490 is.

Q. That is a San Francisco local. A. Article 38 in this agreement says it is hiring procedures. Now, I don't know whether the article you refer to in the other agreement is a different article than this contract.

Q. Let me get the most recent National Master Freight. A. In fact, I don't know what period of time this contract is for.

This agreement says it is agreement between the California Trucking Association and Local 490, so on the face of what it says here on the termination clause, it appears to be a different contract than the National Master we have.

[831] Q. The National Master Freight Agreement, though, is included in the front of it. A. They may well have negotiated the Master Agreement into their local agreement. We've done this in many other parts of this industry that's not covered by our National Master, but these associations——

Q. Certainly. Referring you again to Plaintiff's Exhibit 2, you agree that the National Master Freight part of this document ends at Page 40. A. Well, you're pointing to Page 40 and it has the negotiating committee listed there together with Joint Council Number 7 Supplement, so I assume that this is probably the end of a certain portion of this agreement.

Q. Well, beginning on Page 41, what is it entitled? A. Well, I said it shows it to be Joint Council Number 7 Supplement Agreement.

Q. So that is the beginning of a supplemental agreement, is it not? A. It says Joint Council Number 7.

Q. Right. Now, referring to the first part of Plaintiff's Exhibit 2, which ends on Page 40, is there any Article 38 in that particular part of it? A. I don't see an Article 38 from the page you're pointing to backward.

Q. All right. Now, let me refer you to Article 38 in the **[832]** present National Master Freight Agreement, which is in Plaintiff's Exhibit 203(a), and that is the non-discrimination article. You agree? A. Well, Article 33 is a non-discrimination article.

Q. You mean—— A. You said it is the one that——

Q. Mr. Dixon, you're referring to Article 38 rather than Article 33, correct? A. Well, it is listed in—well, wait a minute.

It's 38. The way it's marked out there, I thought you had pointed to 33. It does say Article 38.

Q. You agree in the present National Master Freight Agreement that that is a non-discrimination article. A. Well, in the context of this case where we are talking about the National Master that deals with this association in this trial, that is the National Master I'm talking about. We refer to the National Master listed over here on the contract that you showed me. This is the same as many of our other contracts that also has a National Master Article in it. Maybe not all, but a portion of them. It is named National Master and tied in with some other contract, but not the same as the Freight National Master.

Q. Right. Now, my question to you is this: Is there an article in the National Master Freight Agreement which was effective from July 1st, 1964 to March 31, 1967, the same as **[833]** the one which is in Article 38 in the present National Master Freight Agreement? A. Is there an Article 38 in what contract?

Q. Is there an Article 38 in the National Master Freight Agreement which was effective from '64 through '67? A. This Agreement 38—the answer to your question, we negotiated this article 38 into the present agreement. We were not able to negotiate this particular article into the prior agreement.

Q. And that article you're referring to is the non-discrimination. A. That is a non-discrimination article.

Q. So it did not exist in the National Master Freight Agreement prior to April 1st, 1970? A. This particular article was not in our prior freight agreement.

Mr. Fenton: Thank you. That all I have.

Redirect Examination

By Mr. Wells

Q. In the prior freight agreement, prior to 1970, were there articles which could have been applied in situations where rights to wages, hours or working conditions were denied on account of race, color or national origin? A. We have for many years had wording in other articles of **[834]** our freight agreements that provided a way for even in the probationary period if an employer cuts a man off because they didn't like the way he parted his hair, if they did it because of discrimination, the man could yet file a grievance, have it processed through the machinery.

Q. Were such grievances processed from time to time? A. Yes, sir.

Mr. Wells: That's all.

Cross-Examination

By Mr. Hunter

Q. Mr. Dixon, I note that in the various contractural agreements involving the Southern Conference your name is identified as a member of the TIE, or the National Over-The-Road—I'm sorry, the National Over-The-Road Policy Committees, is that correct? A. Well, it's shown as a member of the National Over-The-Road Negotiating Committee and/or Policy Committee.

Q. Does it also show that you were a member of the regional committee that assisted in the negotiations of the Southern Conference Supplements? A. Yes, sir.

Q. Okay. How long have you been involved in the negotiation of freight agreements? A. Since 1946.

[835] Q. Accordingly, you are somewhat familiar with the various seniority provisions that exist in the National Master

and Southern Conference Agreements. A. Yes, sir. I have had the responsibility or obligation of writing many of them in prior years.

Q. Okay. Accordingly, as a matter of personal knowledge, would you say that the bulk of the seniority provisions applicable to employees covered by these contracts are found within the National Master and the various Southern Conference supplements at this time? A. Yes.

Q. Now, as I indicated, I could not help but note that you were a member, or at least identified as a member of the National Over-The-Road and City Cartage Policy and Negotiating Committee. Is that correct? A. Yes, sir.

Q. And in that function, did you become familiar with those individuals listed as members of the TEI Negotiating Committee? A. Well, I had an acquaintance with them in the negotiations over several months every three years.

Q. You got to know those people rather well, didn't you? A. Yes.

Q. In that light, I draw your attention to on Page 102 of the Plaintiff's Exhibit 203(a), wherein it does list the various negotiating committees. Are you familiar with the employer **[836]** committee people? A. Yes.

Q. In examining that list, does it appear that any of these names are employees of T.I.M.E.-DC? A. On that one, I don't see any.

Q. Okay. That is the National Master.

Referring on Page 181 of the Defendants' Exhibit—or Plaintiff's Exhibit 203(a), there is also a list of employer negotiating committee members, and apparently representing the Southwest Operators Association in part. Do you recognize any of those individuals as employees of T.I.M.E.-DC, Inc.? A. At the time that those negotiations were held, there is J. A. Pratt that was an employee of T.I.M.E.

Q. He's one of a list of ten people that is on that committee, is that correct? A. Well, in order not to mislead this record on that question, anywhere that I have answered relating to these that you show me as a list of negotiating committee members in this contract, these people generally are only a part of the negotiating committees on each side. There was no attempt to put in the written agreement everybody's name who was on the negotiating committee. I would say generally these are probably what is considered the prime negotiators on that committee.

Q. But Mr. Pratt was at that time an employee of T.I.M.E.-DC? **[837]** A. Of T.I.M.E. and a member of the negotiating committee and he is listed.

Q. That committee was with reference to the Southern Conference Supplement, was it not? A. Yes. Specifically TE was representing the Southeastern Area Motor Carrier Labor Relations Association and the Southwest Operators Association.

Q. Now, Mr. Dixon, having been involved in negotiations as many years as you have, have you witnessed the development of the multi-employer associations as sort of your adversary in the negotiating field? A. Yes, sir.

Q. Accordingly, having watched that, is it your knowledge that these multi-employer associations represent individual employers? A. Yes, sir.

Q. And that, accordingly, they act as the bargaining agent for these individual employers, is that correct? A. Right.

Q. Now, it has been stated on the record, I'll ask you if you have personal knowledge of the fact of whether or not T.I.M.E.-DC was represented by TEI at the time of the National Master negotiations in 1970? A. They were. I answer that on the basis that one of the first things we do in meeting with the employers is to give **[838]** them a list of all the people we represent by listing the powers of attorney we have, and likewise, the employer gives us a list of all the companies they represent under

power of attorney, and T.I.M.E. was one of them on the employers list.

Q. As represented by TEI. A. Yes, right.

Q. Now, you have indicated that the TEI negotiating committee did not appear to list any representative of T.I.M.E.-DC, is that correct? A. TIE?

Q. Yes. A. On the National Committee, well, the list that is printed in the National Master doesn't carry one of them to my knowledge.

Q. Were you involved in those negotiations? A. Yes.

Q. Do you recall any T.I.M.E.-DC official being an active participant in the national negotiations? A. I would have to answer that by saying that I know T.I.M.E.-DC officials. They were in attendance in Washington during the several months of the negotiations. I won't say they were there all the time, like some of our people weren't there at all times, but some of us were there at all times, and in that respect I saw T.I.M.E. as well as representatives of the other companies in various sessions with us, so this was **[839]** probably when we were discussing problems in trying to reach an agreement to some aspect of the National Master Agreement as well as the supplements.

Q. But when you were involved in the national negotiations, was it your assumption or your personal knowledge that the TEI Negotiating Committee, who were engaged in the negotiations with you, were representing T.I.M.E.-DC at that negotiation? A. Absolutely. And in that respect, when we were down to basics of trying to reach an agreement on the National Master, normally we would cut down to a small committee on the unions' side and a small committee on the employers' side, and in that respect I don't remember a representative of T.I.M.E. sitting in on that aspect of the National Master, but I put no significance to it.

Q. And you understood that the TEI Negotiating Committee represented not only T.I.M.E.-DC but represented enumerable other motor carriers in that same negotiation, is that correct? A. Hundreds and hundreds, yes.

Q. They were representing as the authorized representative of these hundreds of carriers in these negotiations. A. Yes, sir.

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[840] **DONALD SANBURN,**

called as a witness at the instance of the defendant, unions, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Wells

Q. State your name, please, sir. A. Donald Sanburn.

Q. Where do you live, sir? A. I live in La Habra, California.

Q. What is your occupation? A. I am the Director of the Transportation Opportunity Program.

Q. What is the Transportation Opportunity Program? A. The Transportation Opportunity Program is a program funded under state funding at this point under the Manpower Development and Training Act. Our purpose is to train professional heavy-duty truck drivers.

Mr. Wells: As a matter of shorthand, if Your Honor please, I have had marked for identification as Exhibit QQQ the November, 1971 issue of American Education, which is the official publication of the United States Department of Health, Education and Welfare, and I offer it in **[841]** evidence with

specific reference to the article beginning on Page 34 entitled "Top Drivers Make the Grade," if I may hand this up. This is a reprint, although the original magazine——

The Court: Any objection to the admission of Triple Q into evidence?

Mr. Fenton: No objection.

The Court: All right. It's admitted.

(Defendants' Exhibit QQQ received into evidence by the Court as Defendants' Exhibit QQQ—Article from American Education.)

Q. (By Mr. Wells) So that we can move along, Mr. Sanburn, is this or does this article in general outline and explain what TOP is and how it operates? A. (By the Witness) Yes, sir, basically.

Q. What is your function with respect to TOP? A. I am the director of the program.

Q. How long have you held that office? A. Since January of 1967.

Q. Very briefly, how was the program initiated? A. The original concept was a joint venture between the Institute of Industrial Relations at UCLA and the Joint Council of Teamsters Number 42.

Q. May I interrupt. What is the Joint Council of Teamsters Number 42? A. The Joint Council 42 is an organization of approximately **[842]** fifty-five local unions in the Southern California area.

Q. All Teamster affiliated local unions in Southern California? A. All Teamster locals.

Q. All right. Now, you say there was some participation by UCLA and then by this Joint Council of Teamsters. Just what happened? A. Well, UCLA applied to the Department of Labor for a feasibility study, which was necessary in order

to convince the government that there was training needed in trucking and UCLA conducted the feasibility study and proposed to the Department of Labor, United States Department of Labor that the Teamsters should be the body chosen to operate the program, the Joint Council 42.

Q. Under what statute? A. Under the Manpower Development and Training Act of 1962.

Q. Does that make provisions for possible subsidies to certain educational institutions? A. Yes, sir, it does.

Q. Did there come some problem of explaining to the government that the Teamsters Joint Council was an educational institution? A. Yes. The educational establishment would not sign off the proposal.

Q. Without going into detail, did you work out that red **[843]** tape and was there set up the TOP program? A. Yes, it was established and the contract was signed by Ted Merrill of Joint Council 42 as of January 31, 1967.

Q. What position did Mr. Merrill hold at that point? A. Chairman of the Board.

Q. Of what? A. TOP.

Q. What was his Teamster position? A. He was president of Joint Council Number 42.

Q. Now, was TOP organized as a non-profit corporation then? A. Not immediately. The first contract was signed by the Joint Council and the Joint Council operated the program.

Q. Now, when you refer to the Joint Council, you mean the Teamster Joint Council in Southern California? A. That's right.

Q. All right. Thereafter, did there come an organization of a non-profit corporation? A. Yes, sir.

Q. Which continues the program with Teamster Joint Council participation and sponsorship? A. Yes.

Q. Briefly, how did it operate? A. It was established as a non-profit educational organization under California law, and the Teamster president of Joint Council Number 42 became the chairman, was made the **[844]** chairman of the board and we had, in addition to Teamster officers, we had community members on the board of directors.

Q. All right. But what need did it meet. A. Well, the basic need it met was that there was some kind of tax liability and problems which had to do——

Q. No, I'm not talking about the internal problems. I'm talking about what community need did it meet, what social need did it meet? A. The idea of the TOP, Incorporated and the change of the board meant that we brought the community into the board operation of the program.

Q. Without regard to the structure, where it was Joint Council corporation operated, what was its function with respect to the community?

Did it engage—— A. Yes, the basic idea from the beginning was to recruit and train minority personnel as professional heavy-duty truck drivers.

Q. And as of that time when it was first instituted, was there a reservoir of qualified truckdrivers in the Los Angeles area, including minority persons? A. No, there wasn't.

Q. Was there an effort then through TOP to provide qualified truckdrivers with special emphasis on education of persons from deprived areas of the community? **[845]** A. Yes, there was.

Q. How did you effect that? A. Well, we set up offices in the neighborhood community for recruitment purposes, one in south-central Los Angeles, one in east Los Angeles.

Q. One of those in the so-called Watts area and another in the Spanish speaking area? A. Yes, we did. For purposes

of recruitment and from the beginning we had no difficulty in recruiting personnel for the training.

Q. All right. Then what training was given? A. They are trained in heavy-duty trucking. That means that they start out on a gas rig, a two-speed rear end, and then we move them into diesel where they get compound transmissions, plus road-range transmissions, all the modern kind of diesel equipment and different combinations of trailers.

Q. Now, in addition to learning to drive, is there instruction in connection with making logs and manifesting and loading? Just tell the Court what it is you teach people. A. Well, from the beginning, the first thing we have to do is teach them the California Vehicle Code so they can pass their written test, and get their permit to drive on the road, and from the beginning they keep a log, which is all the way through their training, so that we know when they were actually driving, when they were on a vehicle observing, when they were **[846]** backing in the yard, when they were in a classroom, so that during the eight-week period they are in, they keep the log so that they learn how to keep a log. In addition, we teach them bills of lading, we teach them trip reports, accident reports, how to fill out applications for jobs and the various things that is the business work of the job.

Q. Is there also instruction in connection with whatever the California regulatory body requirements are with respect to driving? A. Yes.

Q. Briefly, what are those? A. Well, if they are driving in California in an intrastate, they are under PUC regulation, Public Utilities Commission. If they are going to be working for a company that is under DOT regulations, we have to teach them the ICC regulations.

Q. In some of the depositions there is reference to a Class 1 certificate or a license. What is that? A. Well, in California there are three classes of licenses. The Class 3 is for a regu-

lar passenger automobiles; the Class 2 is for vehicles of three axles, and buses, and if you have a bus license you must take first aid, first aid course, and then the Class 1, which is a license which qualifies you to drive any vehicle on the road.

Q. Now, what do I have to do to get a Class 1 license? A. Well, you first pass the written exams which includes **[847]** the basic California regulations, plus the vehicle supplements which includes the lengths of vehicles, the type of vehicles.

Q. As a matter of fact, first don't I first have to have had a plain vanilla operator's license for a year? A. At least a year.

Q. How many of these deprived people out of Watts or ghetto areas had even that? A. We ran into quite a few who didn't have a license, and hadn't had one, and of course, they aren't eligible to go for a Class 1.

Q. Once you screen somebody that had an operator's license to drive a passenger vehicle, then you take them through these various courses in the business end of the industry and the regulatory provisions, both of the California regulatory bodies and the national regulatory bodies, and through the actual functions of driving trucks, is that correct? A. Right.

Q. Did you have some special equipment provided for that purpose, for the on-the-road driving? A. Yes. We developed a truck, a diesel and we put, like a box behind the cab and had the cab cut out so that the trainees riding in the cab could observe the student who was driving the vehicle, and we provided the instructor with a speaker system so the trainees could hear his instructions, and he could take them out away from the school and keep them out all **[848]** day rather than keep making trips back to pick up students.

Q. Did there come instructions both in driving in the city area and in the rural areas and deserts and mountains and so on? A. Yes, sir, right.

Q. Over what period of time would this instruction take place for a particular class? A. Eight weeks.

Q. Now, at the time you commenced this program, was there a pool of qualified blacks in the Southern California community insofar as truck driving is concerned? A. No, there wasn't.

Q. Has there been since that time? A. Not of minority drivers.

Q. What has happened since your program began in terms of the outcome of the program, the people that you graduate? A. You mean what has happened to people after they graduated?

Q. Well, how many—have you prepared an exhibit showing how many people from October 30th, '67 to May 12th, 1972 came through your program? A. Yes, I have.

Mr. Wells: Your Honor, this is Exhibit **RRR**, which we offer.

Q. (By Mr. Wells) Now, during that period of time how many persons have successfully completed your program of training? **[849]** A. In the entry program, twelve hundred ninety-two.

Q. And does this exhibit show the breakdown of twenty-four percent Caucasian, forty-three percent black, twenty-nine percent Mexican-American, four percent other? A. Yes.

Q. What would the other classification be? A. We classify Oriental, Bolivian, Puerto Rican.

Q. Now, do I understand that this exhibit then shows that a total of 1,292 persons who are qualified by reason of your course have become qualified truckdrivers. A. Yes.

Q. What has happened to them? A. Well, at our last follow-up survey, we found about eighty-five percent of them were working.

Q. In what industries? A. In trucking.

Q. Driving trucks. A. Yes.

Q. With what result as far as income was concerned? A. Well, it's a little hard. We have had different studies done. The last study indicated that the first year out of training the average earnings of our graduate was about $6,900.00, I think.

Q. Compared to what? A. Compared to under three thousand before they came in.

[850] Q. More than doubled then by reason of the program. A. Yes, that's right.

Q. Have you found an employer market for your graduates? A. Yes, we have.

Q. How did you do that? A. Well, we have job placement officers and we depend upon union business agents to let us know when they have jobs available that they can fill from their membership.

Q. And have you been able to place your graduates through these various sources? A. Yes, we have.

Q. In the industry for driving trucks. A. Yes, we have.

Q. Now, your Exhibit Triple R shows an ethnic breakdown of graduates in the up-grader program. What is that? A. That is a program we operate in the evenings and on Saturdays and Sundays and that is for people who are presently employed in the industry who can come on their spare time, their off-duty hours, and take the training to become heavy-duty men.

The Court: This wouldn't be the same group that you had?

A. (By the witness) No. It's a different group.

The Court: This is a different group of people.

[851] A. (By the witness) Yes, these must be working.

Q. (By Mr. Wells) Speaking of the second group, those shown at the bottom of Exhibit RRR, those, for example, are persons who might be hustling freight on the dock, dock workers, but who have no experience, no expertise with respect to driving trucks. A. (By the witness) That's right.

Q. Is that the type of person that is the beneficiary of the second program? A. Yes.

Q. All right. And just briefly explain it. A. Well——

Q. First, if I am a dock worker, don't know anything about handling trucks, how do I get into that program? A. Well, we have—they make application to us to get into the program and we ask that they go to their employer and ask him for a letter indicating if they take the training that they will have an opportunity to bid for a better job. What we wanted to do with the evening program is to move people up out of entry jobs into other jobs so that we could create openings for our daytime graduates.

Q. All right. You get a letter then from an employer who says that Nat Wells, who is a minority employee on the dock, that he will have a truck driving job for him if the man qualifies, right? **[852]** A. Right.

Q. Then, he takes your program, then what happens? A. Then, depending on, I suppose, who he works for, our experience has been that about half of our men change jobs. They leave the company, even though the company——

The Court: Do they take an up-graded job?

A. (By the witness) Yeah. Our experience had been that roughly half leave the company they were working for, even though the company wrote a letter saying if they took the training they could move to a better position, and of those that leave their company and go to another company, their average increased earnings the first year are about $700.00 more than those who remain with their present company.

Q. (By Mr. Wells) Are you saying that a man on the dock with seniority on the dock will take this program and then give up that seniority and go brand new to another company and make more money than he was making on the dock? A. (By the witness) Oh, yes, yes.

Q. You don't find then that the loss of dock seniority constitutes any block or barrier to some person moving into truck driving jobs. A. No.

Mr. Fenton: Your Honor, I object to that as calling for a conclusion.

[853] The Court: Well, I'm going to sustain the objection. I think his figures speak for themselves.

Q. (By Mr. Wells) How many different companies have you placed your trainees with? A. (By the witness) At last count the count was 136.

Q. At the moment are you having some trouble with the funding of your program? A. Yes, we are.

Q. Has it required a cutback of the second portion of the program where at the moment all you are on is the first program of it, that is, the entry program? A. Yeah. As of September 30th our contract with the State of California will expire on the up-grading program, and it will not be refunded after that.

Q. Are you familiar with the Western Conference of Teamsters? A. Yes, I am.

Q. Are you familiar with the fact that that organization passed a resolution with respect to the funding of a program similar to yours? A. Yes, I am.

Mr. Wells: If Your Honor please, there has been marked for identification Exhibit TTT.

Q. (By Mr. Wells) What is that, please, sir? A. (By the witness) It is listed as a proposed resolution **[854]** on negotiated

training funds. It was actually adopted by the Western Conference as policy.

Q. When was it adopted? A. February 1st of 1972.

The Court: Incidentally, all of these are being admitted into evidence unless there is some objection from Counsel to them.

(Defendants' Exhibits RRR and TTT received into evidence by the Court as Defendants' Exhibits RRR and TTT)

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Q. Even with your program, have you been able to develop yet in the Southern California area a pool of qualified blacks or minorities qualified to drive trucks? A. Well, I think we have developed quite a few qualified minorities, but it doesn't constitute a surplus pool because even now——

The Court: What do you mean by pool; you **[855]** mean surplus drivers or——

Mr. Wells: A labor pool which an employer can call on, an employer who needs a truck driver.

The Court: Evidently they are calling on eighty-five percent of them, but you mean some more up above that eighty-five percent?

Mr. Wells: I'm trying to find out if there is, in this man's experience, any such qualified pool of available drivers to employers in that area.

A. (By the witness) No. In fact, we have trouble from time to time, we get offers for jobs, to find the men who can take them.

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Cross-Examination

By Mr. Fenton

Q. Mr. Sanburn, you gave some indication of the response in the minority communities to the TOP program. Could you

please give a little more detail as to what that response has been? A. In terms of applicants for the program?

Q. Yes. A. Well, in the initial in-take period, which was back in August of 1967, we had need for 190 trainees to begin the program, and we recruited those 190 with no problem, and from **[856]** that time on in the trucking program, there's been a waiting list at every employment service office that does intake for the TOP program.

Q. So generally, your experience has been then that there has been a tremendous amount of interest, there has been more than adequate response in the minority community to your program. A. Yes, that's right.

Q. I'd like to know whether in Defendants' Exhibit QQQ, whether or not you are the project director, Donald Sanburn that is identified in this article? A. Right, right.

Q. You also indicated earlier that persons that were involved in the up-grader program, graduates of the up-grader program generally went with another company, or were making higher salaries rather than choosing to remain with the company with whom they were employed when they went into the program. Is that correct? A. I think the figures are roughly half.

Q. All right. A. Half change companies.

Q. What type of positions were the persons in this up-grader program employed in, what type of position would those be? A. They came to us from the shops, they came from the warehouses and from the city pickup and delivery jobs.

[857] Q. And to what positions were you working with them in the up-grader program? A. The basic purpose was to train them as over-the-road drivers.

Q. And this program is how long? A. How old?

Q. How long? A. Eight weeks.

Q. Is the training program eight weeks? A. Even the up-grader is eight weeks.

Mr. Fenton: No further questions.

The Court: Let me ask you, did the roughly half that you talk about going to other companies, do you have any knowledge or figures of what kind of jobs they got with these other companies? A. (By the witness) Yes, I do. Basically over-the-road jobs.

The Court: In other words, they were able to obtain employment for which they were trained.

A. (By the witness) That's right.

The Court: Do you know what the other half did? Did they stay in the same positions they were in or did some of them get over-the-road with the same employer? Do you have any idea about those?

[858] A. (By the witness) I think basically the major difference was that some of the fellows who came from the dock will transfer into the city pickup and delivery, and so their increased earnings were a little bit less than—but even men who had been driving bobtails who got heavy-duty jobs would get more overtime because they were able to drive any truck available rather than just a single bobtail, so they came back in from a run with a bobtail, they had another load to go and they could send them out.

The Court: You're saying that the other half that stayed with the same company up-graded them in some respect.

A. (By the witness) Average increased earnings the first year after graduation was $1700.00.

The Court: Now, are we talking about the half that stayed with the company?

A. (By the witness) Half that stayed with the same company.

The Court: And the others that went with the other companies?

A. (By the witness) Roughly, $2300.00.

The Court: Thank you.

Cross-Examination

By Mr. Hunter

Q. Mr. Sanburn, are you personally familiar with the defendant corporation, T.I.M.E.-DC? **[859]** A. Yes, I am.

Q. Do you know if they have facilities in Los Angeles, California? A. Yes, they do.

Q. Or the suburbs? A. Yes.

Q. Has T.I.M.E.-DC ever called upon your organization as a source of city driver applicants? A. Yes, they have.

Q. Do you recall the approximate time that took place? A. I think 1968. I think the first contact was in '68.

Q. Did you send them some applicants? A. Yes, we did.

Q. To the best of your knowledge, were they employed by T.I.M.E.? A. To my certain knowledge, at least four were hired, yes.

Q. You absolutely know that four were? A. Yes, that's right.

Q. This was in 1968? A. Yes.

Q. Do you recall the particular predecessor of T.I.M.E.-DC that was involved in that? A. Yes, T.I.M.E., Incorporated.

Q. It was T.I.M.E. Freight? A. T.I.M.E. Freight.

[860] Q. Have you had any further contact with any officials with T.I.M.E.-DC with regard to this program? A. Yes, we have.

Q. Would you illustrate what those contacts were? A. Well, our job placement officer regularly calls on T.I.M.E-DC and we have not been successful in placing people lately because of the merger, and the fact that there are still some people on layoff, but we have accepted three trainees from T.I.M.E.-DC into the up-grading program.

Q. I see. When did this take place? A. This took place in 1971, I guess, about six months ago.

Q. You indicated in earlier testimony that applicants for the up-grader program are only accepted when the employer indicates that there will be some benefit from the program if they succeed. A. That's right.

Q. Do you remember the official who was involved in that? A. Mr. Lillywhite.

* * * * * * *

Redirect Examination

By Mr. Wells

Q. The Court asked you a question about a fellow who had **[861]** been on a—about increased income of a man who stayed with the same employer after following your program. Are you familiar with the city contract in the Southern California area? A. Yes, I am.

Q. Does it carry different rates of pay for road drivers, depending on the size of the truck? A. In the city classification?

Q. Yes. A. Yes.

Q. So if Nat Wells was able to drive what is known as a bobtail, a rather small truck, he would get a specified rate per hour. A. Yes. right.

Q. But until he had the knowledge and skill that is imparted by your program, he would be unable to take advantage of the higher rates of pay for a multi-axle, or for a tandem or what-

ever the other more difficult operations is, is that correct? A. That's right.

Q. It was on that basis that there was how much increase of those people who stayed with their same employer? A. An average of $1700.00 per year.

* * * * * * *

[862] Recross-Examination

By Mr. Fenton

Q. Mr. Sanburn, do you know whether or not there were any contacts with your organization by T.I.M.E.-DC or any of its predecessor companies, LASME, Denver-Chicago, or T.I.M.E. Freight, making inquiry about possible placement for any road drivers? A. Well, let me put it this way: I don't know if they contacted us. We sure contacted them. Our job placement officers did call on each of those companies and talk to them about it, about our program.

Q. Were there any placements of any minority road drivers? A. I really can't tell you. I don't know.

The Court: How about these four you were talking about, what classification were they put into?

A. (By the witness) They originally went in as city pickup and delivery men.

* * * * * * *

Supreme Court, U. S.
FILED
JUL 21 1976
MICHAEL RODAK, JR., CLERK

APPENDIX
Volume III

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-636 and No. 75-672
(Consolidated)

No. 75-636
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent,

and

No. 75-672
T.I.M.E.-D.C., INC.,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI IN NO. 75-636 FILED OCTOBER 29, 1975
PETITION FOR CERTIORARI IN NO. 75-672 FILED NOVEMBER 6, 1975
CERTIORARI FOR BOTH GRANTED MAY 24, 1976

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[863] **CHARLES F. HUTCHINSON,**
called as a witness at the instance of the defendant, unions, having been previously sworn, was examined and testified as follows:

[864] **Direct Examination**

By Mr. Wells

Q. You are the same Mr. Hutchinson that previously has been sworn and testified in this proceeding? A. Yes, sir.

Q. Mr. Hutchinson, as applications are made by people in units other than the road unit to move to the road, are they judged by any different standard insofar as the employer is concerned with respect to color, race or national origin of the applicant? A. No, sir. Race or national origin has nothing to do with it.

Q. To your knowledge, has there ever been an instance where a black or brown applied to transfer and was denied on an occasion when a white similarly applied to transfer and was given a transfer? A. Not to my definite knowledge. Of course, in the course of the depositions, there have been inferences, but of course, I'm not the judge on those.

Q. I take it that in the depositions there was some claim of that in Memphis and in Atlanta, was there not? A. Yes, sir.

Q. Do you recall, I believe you were at all of the depositions, was there even a claim of it any place else? A. I don't remember one offhand, but there were so many **[865]** cities.

Q. With respect to the transfer between any unit, is there any different standard with respect to white, black or brown? A. No, sir.

Q. Mr. Hutchinson, I hand you what has been marked for identification as Exhibit UUU. Would you explain for the record

what that is, please, sir? A. Yes, sir. This is a rough map of our terminal facilities. The facilities circled in red, sir, are those points where we have line drivers.

The Court: Circled in red?

A. (By the witness) Yes, sir.

The Court: Let me see here.

Mr. Wells: Red dotted.

A. (By the witness) Dotted.

The Court: All right, sir.

A. (By the witness) Those that are dotted in black are those facilities where we have no line drivers. Those facilities with the red and green mark are those facilities where we have line drivers but no terminal operation, so to speak, no dock operation.

Q. (By Mr. Wells) Did I read your map correctly then? Well, please state for the record what areas at which there are located line drivers, but no city drivers. A. (By the witness) In Medford, Oregon, Sallisaw, Oklahoma, **[866]** Venita, Oklahoma and Winchester, Virginia.

The Court: Medford, Oregon, you say?

A. (By the witness) Yes, sir, that's a relay point.

The Court: It shows in California on my map.

Mr. Wells: I think they redone the map. Here they've got it in California by error. Medford should be in Medford, Oregon, should it not?

A. (By the witness) Yes, sir.

The Court: Well, let it remain up there.

A. (By the witness) In Kalamazoo, Michigan, no kind of operation, just sales office.

Q. (By Mr. Wells) All right, sir. Now, you have indicated where there were line drivers, but no city drivers. Where are there city drivers but no line drivers? A. (By the witness) In those facilities that are marked in black, such as Hobbs, San Antonio, Tucson, San Diego.

Q. All right. Let's say that—let's take San Antonio. What is the closest spot to San Antonio at which there are road drivers? A. Dallas.

Q. Approximately what is that, over three hundred miles? A. I would say so, yes, sir.

Q. Now, what, if any, problems would there be if it should be required that city people have an absolute right to go to the **[867]** road in San Antonio——

Mr. Fenton: I think he clarified it. I was just wondering if he was limiting his question to that particular transfer possibility.

The Court: All right.

A. (By the witness) Well, from San Antonio to Dallas, there's no road drivers in San Antonio, and whoever wanted to be a road driver in San Antonio would have to move to Dallas.

Q. (By Mr. Wells) Well, are there other areas in that part of your system where there are no road drivers? A. (By the witness) Such as Hobbs, you mean?

Q. Operationally, how would you work it out to fairly give every city man—— A. Operationally, sir?

Q. ——an opportunity to go to the road if that were required? A. Operationally, sir, I don't know how you would work it out. You would disrupt—You need, for instance, to know as a matter of sound operating principles what your city crew was going to be. You need to know what your road crew is going to be, size of the availability of it. If you were going to transfer everybody all over, there would be the practical

things of moving, disruption of the particular board at one place or another by people moving in and out.

Q. For example, Medford, Oregon, is in southern Oregon, and **[868]** it appears only to be a road station, is that correct? A. Yes, sir.

Q. Now, if you were required to give local people a shot at road jobs, how would you select which local boards would be considered with respect to a vacancy at Medford, Oregon? A. You would have to through the other fifty in a hat and draw, I guess.

Q. You might draw from Portland or Seattle or from San Francisco or Los Angeles, Toledo, or Springfield, or where would you draw them from? There's no practical way to decide it, is there? A. Well——

The Court: Couldn't they bid on it just like they got a right to bid from one road job to another job?

Mr. Wells: That's a good question.

Q. (By Mr. Wells) What would be the area from which the bid would be accepted? A. (By the witness) Could be anywhere from Portland to Albany.

The Court: Well, can't they do that, now?

A. (By the witness) No, sir.

The Court: On a road job to road job, can't somebody in Portland bump somebody over in Boston?

A. (By the witness) No, sir.

The Court: What is your limitation?

[869] A. (By the witness) You're limited to the particular unit and particular jurisdiction of that unit.

The Court: What do you mean?

A. (By the witness) Well, the Southern Conference is the only conference that has a modified seniority thing whereby you can move from one location to another. The Western Conference doesn't and the Central and the Eastern don't have the modified——

Mr. Wells: May we take a minute to develop that?

Q. (By Mr. Wells) Let's take the Southern Conference. Do you have a road board in Atlanta? A. (By the witness) Yes, sir.

Q. I'm talking about only the road, and operate in Atlanta. A. (By the witness) Yes, sir.

Q. Is that board related, absent modified seniority, to the Dallas board or the Memphis board or any other board? A. Not absent modified seniority.

Q. If you move that situation then up to the Central States where you have St. Louis and Kansas City, is the St. Louis board related to the Kansas City board at all as far as road people are concerned? A. No, sir. It's entirely distinct.

Q. Now, you have indicated then that basic position and practice is that road boards are unrelated to each other except **[870]** for so-called modified seniority in the Southern Conference. A. Yes, sir.

Q. Was modified seniority in the Southern Conference? A. Well, it permits—do you want a definition of how it works?

Q. How it works. A. Well——

Q. Assume you are diminishing the Atlanta board, you are increasing the Dallas board. A. Okay. If you are diminishing the Atlanta board and your seniority would permit you to work in Dallas, then you can work in Dallas, if you will.

Q. And you would move your road seniority over to the road unit in Dallas. A. Yes, sir.

Q. And if it was sufficient, it might bump some Dallas drivers. A. Yes, sir.

Q. If it was less than the drivers on the Dallas board, you would go to the bottom of the Dallas board. A. That's right, sir.

Q. Now, that kind of mobility as between road boards has been negotiated only in the Southern Conference, is that correct? A. Yes, sir.

[871] Q. And if I am a road driver on the Medford board, Medford, Oregon, and there come a diminution in business, what happens to me? A. You are out of work.

The Court: You can't go to another board?

A. (By the witness) That's right.

The Court: Is that in the contract?

A. (By the witness) That is by contract, yes, sir.

The Court: The area?

A. (By the witness) Whatever particular supplement covers it.

Q. (By Mr. Wells) Now, under modified seniority, is there free run? If there comes a diminution in Atlanta, and I am on that board, I'm not caught by the diminution but I figure well, Atlanta is on the downgrade and Dallas is on the upgrade, can I just pick up my Atlanta seniority and move it over to Dallas? A. (By the witness) No, sir.

The Court: You have to be terminated or laid——

A. (By the witness) You have to be laid off.

The Court: You can't do it just to get a better place to live.

A. (By the witness) In other words, when there's a **[872]** reduction in business somewhere, somebody is going to be laid off somewhere.

The Court: But you can't do it unless there is a reduction in force.

A. (By the witness) that's right.

Q. (By Mr. Wells) In your experience in this industry, if you were required to move city and road in the light of the geography which your company serves and in the light of the location of road personnel, would it be feasible to do so? A. (By the witness) No.

Mr. Fenton: Your Honor, is that question—I'd like——

The Court: He's already said it wouldn't.

Mr. Wells: All right.

Mr. Fenton: I would just like—well, if there is going to be an answer, I'd like a clarification.

The Court: All right. Wait and see if Mr. Wells is through. Are you through with this witness?

Mr. Wells: I am through with that issue. I'm not——

The Court: Let's let him go ahead. You develop it on cross-examination.

Q. (By Mr. Wells) Mr. Hutchinson, I hand you what has been marked for identification as Exhibit Triple S. Would you explain to the Court what that is, please, sir? **[873]** A. (By the witness) We selected twenty-one of our largest terminals merely to demonstrate, or purely to demonstrate the minority breakdown by local union. Also to illustrate the problems. When you're talking about San Francisco, you're not just talking about the San Francisco terminal per se, but you're talking about six different locals.

Q. So that the exhibit will be understandable, the first column shows the terminal and the local union. A. Yes, sir.

Q. An SFO, for example, stands for—— A. San Francisco.

Q. The next line is percentage of population? A. That is percentage of minority in the standard metropolitan statistical area where applicable.

Q. For example, there were 10.6 Negroes, 6.4 Spanish speaking Americans and a total of 23.6 minority, is that correct? A. Yes.

Q. Now, that takes the standard metropolitan statistics, is that correct? A. Standard metropolitan statistical area.

Q. That is without regard to employable age, distance from the terminal, or qualifications, is that right? Just pure census figures? A. Yes. For instance, our San Francisco terminal is in Oakland and Hayward. Nobody lives out there where it is.

[874] The Court: That is employees of T.I.M.E. along with that union.

Q. (By Mr. Wells) In Local 70, a hundred and nineteen, is that correct? A. (By the witness) Yes.

Q. Of whom eight are Negro or 6.7 percent of the total. A. Yes.

Q. Twenty-one percent are Spanish speaking? A. Yes, sir.

Q. I mean twenty-one. A. 17.7 percent, yes.

Q. That would be an excess over the 6.4 Spanish speaking Americans in the metropolitan area. A. Yes.

Q. And similarly, now, is similar information shown for each of the terminals? A. Yes, sir.

Q. Perhaps you should identify those terminals in sequence. A. All right. It would be San Antonio, and OKC, Oklahoma City, Memphis, Nashville, Dallas, Denver, Atlanta, Chicago, our two Los Angeles facilities, Albany.

Q. You combined the two there, did you? A. Yes. Albany, North Bergen, New York City, which are both commonly called New York City terminals, El Paso, Kansas City, Knoxville, Phoenix, Seattle, St. Louis, Winchester and **[875]** Portland.

Something that isn't too clear, if you look back on the first page at the terminal marked DAL, Dallas, we have Local 645, a hundred——

Q. Local 745? A. Seven forty-five, pardon me. And that consists of a road unit, dock unit, a garage unit and an office unit, all four separate different contracts and we didn't break it down that far.

Q. Whereas in San Francisco, Local 70 represents one particular unit, 468 another, etc. A. Yes.

Mr. Wells: We offer the Exhibit Triple S in evidence, Your Honor.

The Court: It's admitted.

(Defendants' Exhibit SSS received into evidence by the Court as Defendants' Exhibit SSS.)

Q. (By Mr. Wells) Without taking the time to extract the particular exhibit at this point, do you recall that you sponsored an exhibit yesterday which showed the money differences between take-home pay between city and road employees of T.I.M.E.-DC? A. (By the witness) Yes. It would be gross pay, if you will, sir.

Q. Actually, there were two separate exhibits, were there **[876]** not, one on the basis of those making more than three thousand and tne other an overall exhibit? A. Yes, there were two.

Q. Now, those were for the year 1971, were they not? A. Yes.

Q. Is it not true that as of January 1st, 1972, there was a twenty-five-cent-an-hour raise for the city people? A. Yes, sir.

Q. And twenty-five times a forty-hour week is what, ten dollars a week? A. Yes.

Q. Five hundred twenty dollars a year, if they only work straight time. A. Yes, straight time.

Q. If they followed the overtime patterns of prior years, approximately how much will be added to the city employees by reason of that January 1, 1972 increase? A. Oh, say add a ten percent ratio, which is fairly typical, it would add—I'm not the local mathematician, another three or four or five dollars a week.

Q. In the neighborhood of $600.00 a year more income coming to each city man or dock man as of January 1, 1972. A. Yes, sir.

Q. There was no similar raise for the road driver at that time, was there? **[877]** A. That's right, there was no raise.

Q. The road driver as of now, and until next July, as the contract indicates, is at the same level he was in '71. A. Yes, sir. As a matter of fact, over the term of this contract the dock people, if you will, including cost of living, I think their total increase will be about two dollars and one cent an hour. The drivers' rate will increase approximately a dollar twenty-five cents an hour.

Q. So the gap, if there was one shown in those exhibits of yesterday, is substantially narrowed already in 1972. A. Yes, sir.

Mr. Fenton: Objection. That calls for a conclusion.

The Court: Well, I'll sustain the objection.

Q. (By Mr. Wells) In that connection, did the road income which you computed in those exhibits take into account the extra expense which road drivers have which a city driver does not have? A. (By the witness) No, sir, it didn't.

Q. Is it true that a road driver does have some expense which a city driver does not have? A. Yes, I think the IRS, as a matter of fact, allows them sixteen or eighteen hundred dollars a year exemption typically for his road expenses.

[878] Q. To your knowledge, is there presently existing a pool of qualified blacks qualified to drive road equipment, blacks or other minorities in any area in which T.I.M.E.-DC operates?

Mr. Fenton: Objection to that. Improper predicate.

The Court: I'll overrule.

A. (By the witness) The difficulty that we are——

The Court: Just answer him yes or no. Do you have any knowledge of the pool?

A. (By the witness) No, sir.

Mr. Wells: I believe that's all.

The Court: All right, sir. Mr. Fenton?

While they are conferring here, have you made any study in the form of a questionnaire or inquiry of the city units of how many of those would desire a transfer to the road unit?

A. (By the witness) No, sir. We get occasional flare-ups from city people.

The Court: I mean have you made a survey?

A. (By the witness) No, no, no, no survey.

The Court: You couldn't say five percent of what?

A. (By the witness) I couldn't say.

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Cross-Examination

By Mr. Fenton

Q. Mr. Hutchinson, you were asked some questions about Defendants' Exhibit UUU, and the possibilities of transfer from city to road, and you recited some examples of terminals where

you have only city drivers and others where you have only road drivers.

Was your testimony in response to Mr. Wells' question based on the assumption that he was asking you about unrestricted transfers anywhere in the system from city to road? A. Yes, sir, it was. We were speaking about the geographic problem.

Q. You assumed as a predicate that he was inquiring about the possibilities of a transfer from the, let's say a city driver in Providence, Rhode Island to one in Medford, Oregon. A. As a matter of geographic problem, yes. There are others, of course.

Q. You included that in your comment about the problem; I mean, you included that possibility when you commented. A. The geographic problem?

Q. Yes. A. Yes.

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[880] **Redirect Examination**

By Mr. Wells

Q. Mr. Hutchinson, along the line of the Court's inquiry as to whether you made any survey as to the number of city people that wanted to move, as I recall, you have had some experience in Memphis where there is an agreement with the local union that on a seniority basis people can move city to road starting at the bottom of the road board for bid and layoff. A. Yes, sir.

Q. And there are in the neighborhood of a hundred and fifty people in the city unit in Memphis. A. I believe so, yes, sir, approximately.

Mr. Wells: If Your Honor piease, that will be shown specifically, I believe, in Exhibit 171.

Q. (By Mr. Wells) Do you recall how many people asked to take advantage of that agreement with the local union there? A. (By the witness) I believe it's through '71, it would be about some thirty-two people.

Q. Over how long a period of time? A. Ever since April of '69 to the end of '71 would be——

Q. How many out of a hundred and seventy-one are qualified to go into the over-the-road positions?

Ordinarily, you wouldn't think a dock worker having road **[881]** qualifications. How many, or do you have any idea? A. I have no idea.

The Court: But thirty-two of the hundred and seventy-one have transferred.

A. (By the witness) Have transferred.

Q. (By Mr. Wells) Over a period of—— A. (By the witness) Two years eight months.

Q. As the record shows, some of those are white and some are black. A. Some are white and some are black.

Mr. Wells: That's all. Thank you.

The Court: Would you state that a third of the hundred and seventy-one would be qualified or half or I know you said you didn't know, and I shouldn't be asking the question maybe, but any assistance you could give me, I'm just wondering what percentage of those qualified asked to be transferred. It sounds pretty high to me.

A. (By the witness) It does sound high. I think they are down to about two people on there with seventy and seventy-one dates. In other words, they have just about gone through the whole board now on the basis of seniority and I would have no way of really estimating how many would be qualified.

Mr. Wells: Actually, Mr. Hutchinson, Memphis is a place where there is some—quite some agitation **[882]** within the local union as a political issue quite aside from race, is there not?

A. (By the witness) Yes, sir.

Mr. Wells: To your knowledge, more or less than in other locales?

Mr. Fenton: Your Honor, I move that that be the comment of counsel rather than the answer of Mr. Hutchinson.

The Court: Well, I don't know which way the knife cuts itself. I'll let it stay in the record.

A. (By the witness) It is a political problem within the local in Memphis.

Mr. Wells: Thank you.

The Court: But still thirty-two of them want to transfer, political pressure or otherwise.

A. (By the witness) Thirty-two, yes, sir.

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[883] Mr. Fenton: The government has no further evidence, Your Honor.

The Court: T.I.M.E.?

Mr. Schuler: We have nothing further.

Mr. Wells: Nothing further.

The Court: Now, I know, and you have informed me, I don't have any idea about the details, of some partial agreement as to a consent decree. If you want some more time, I kind of gather that you're not quite ready.

* * * * * * *

[*56] The Court: Listen, this is the way it will be. On or before June 15th, the plaintiff will file their proposed findings of fact and conclusions of law, as well as a list of the names of the people that they feel are entitled to equitable relief because of past discrimination, or current discrimination. and the reasons for each of these persons.

The defendants will then have until July 15th to either agree with your findings of fact, or partially agree with them, and agree with the list of names, or partially agree with them, and file their findings of fact that conclusions of law, it being understood that if any good cause is shown by either of the defendants for extension of time to file the findings of fact and conclusions of law, I will look at it favorably, but I would like for the names to be worked out by them, if at all humanly possible, and with each of those I assume that you're going to make your suggestions as to what **[57]** equitable relief you think the people are entitled to, not person by person, but, you know, date of first employment, or whatever, and I would welcome the same suggestion from the defendants.

Then, I believe we said after July 15th, I would give until August 1st for the government to file rebuttal. Of course, if I extend your time, I will extend theirs.

I agree with the government. I would like to dispose of this. If there is a wrong being done, I don't think we ought to compound this wrong by dragging our feet in Court, but I don't want to go so much in a hurry that we are overlooking something, or get ourselves in deeper water than we are in to start with. Let's try to work out a common sense approach to this thing. I know that the union and T.I.M.E. want this business to thrive, and I think the Department of Justice does, too, if we can assume the minorities are protected. What the practical steps are to be taken to solve this, that's all there is to it.

Is that all right?

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* Discussion reported in a separately bound and numbered Reporter's Transcript of Proceedings for May 12, 1972.

Mr. Schuler: Fine, Judge.

The Court: I didn't think we were going to settle this thing today.

B. **Plaintiff's Exhibit 201**

CONSTITUTION AND BYLAWS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Preamble

As almost every improvement in the condition of the working people was accomplished by the efforts of organized labor, and as the welfare of workers can best be protected and advanced by their united action in one great labor organization, we have organized the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

ARTICLE I

Name

Section 1. This organization shall be known as the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and shall consist of an unlimited number of Local Unions chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

The principal and main office of the International Union shall be located at such place as is designated by the General Executive Board.

Objects

Section 2. The objects of this International Union are to organize under one banner all workmen engaged in industry; to educate them to cooperate in every movement which tends to benefit the organization; and to impress upon our membership, employers and the public that it is to the advantage of all concerned that workers be organized. The organization of our industry requires honest and intelligent membership, adapted to the business. We teach our membership the advantage, benefits and importance of their industrial position, and we endeavor to build up and perfect a labor organization in conformity with the highest standards of our American and Canadian citizenship. We seek to improve the industry by increasing the efficiency of the service and by instilling confidence, good will and understanding between our membership and their employers, which will have the effect of preventing unnecessary conflicts or serious misunderstandings between the membership and their employers, and which will further encourage cooperation and fair dealing with all employers so as to secure for our membership reasonable hours, fair wages and improved working conditions.

The objects of this International Union are also to secure improved wages, hours, working conditions and other economic advantages through organization, negotiations and collective bargaining, through advancement of our standing in the com-

munity and in the labor movement through legal and economic means, and all other lawful methods; to provide educational advancement and training for employees, members and officers; to safeguard, advance and promote the principle of free collective bargaining, the rights of workers, farmers and consumers, and the security and welfare of all the people by political, edu-

cational, and other community activity; to engage in cultural, civic, legislative, political, fraternal, educational, charitable, welfare, social and other activities which further the interests of this organization and its membership, directly or indirectly; to provide financial and moral assistance to other labor organizations or other bodies having purposes and objectives in whole or in part similar or related to those of this organization; to engage in community activities which will advance the interests of this organization and its members in the community and in the nation, directly or indirectly; to protect and preserve the International Union as an institution and to perform its legal and contractual obligations; to receive, manage, invest, expend or otherwise use the funds and property of this organization to carry out the duties and to achieve the objectives set forth in this International Constitution and Bylaws and for such additional purposes and objects not inconsistent therewith as will further the interests of this organization and its members, directly or indirectly.

It is recognized that the problems with which this labor organization is accustomed to deal are not limited to unionism or to organization and collective bargaining alone, but encompass a broad spectrum of economic and social objectives as set forth above and as the Union may determine from time to time; we therefore determine and assert that the participation of this labor organization, individually and with other organizations, in the pursuit and attainment of the objectives set forth herein are for the sole benefit of the organization and its members.

ARTICLE II

JURISDICTION, MEMBERSHIP AND ELIGIBILITY TO OFFICE

Jurisdiction

Section 1. This organization has jurisdiction over all workers including, without limitation, teamsters, chauffeurs, warehousemen and helpers; all who are employed on or around horses, harness, carriages, automobiles, trucks, trailers, and all other vehicles hauling, carrying, or conveying freight, merchandise, or materials; automotive sales, service and maintenance employees, garage workers and service station employees, warehousemen of all kinds employed in warehouse work, stockmen, shipping room employees, and loaders, that is, persons engaged in loading or unloading freight, merchandise, or other

materials on to or from any type of vehicle; all classes of dairy employees, inside and outside, including salesmen; brewery and soft drink workers; workers employed in ice cream plants; all other workers employed in the manufacture, processing, sale and distribution of food, milk, dairy and other products; all truck terminal employees; and cannery workers.

Membership

Section 2 (a). Any person shall be eligible to membership in this organization, provided that hereafter no person shall be eligible for membership in the International Union who has willfully refused to become a citizen of either the United States or Canada or of the country in which his Local Union is chartered, at his option.

(b) Persons who own, lease or operate a team or vehicle and/or perform any other work may be eligible for membership in this International Union. If, however, any Local Union can prove to the satisfaction of the General President that the membership of such individuals would be detrimental to the welfare of the Local Union, it may present such facts to the General President for authority to refuse to accept such persons as members. The General President shall consider all the facts and circumstances and render a decision in the matter, subject to appeal to the General Executive Board, which shall be binding on the Local Union.

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(c). The foregoing provision shall apply with equal force to so-called "vendors" and "owner-equipment drivers." A "vendor" is a person who purchases products and sells the same on his own behalf. An "owner-equipment driver" is a person who, in connection with his employment, uses equipment sold or leased to him by his employer or equipment which he has purchased independently but which he uses in whole or in part in the service of his employer. When such persons apply for membership in the International Union, the Local Union and the International Union shall have the right and authority as a condition precedent to membership to approve or disapprove any contract pertaining to such form or similar form of employment.

(d). All contracts hereafter renewed or entered into, pertaining to such form or similar form of employment, shall likewise be subject to such approval or disapproval of the Local Union and Internationl Union. If, in the judgment of the Local Union or International Union, such employment contract will constitute a reduction in the union wage scale then prevailing for such service without "owner equipment," the same shall not be approved by the Local Union, and such persons shall be ineligible to membership or, if members, shall cease to work under

such conditions or be subject to suspension or expulsion by the Local Union or International Union.

(e). The General Executive Board is empowered,

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when necessity arises, to change, alter and amend any provision of paragraphs (b) through (d) inclusive of this Section.

(f). Local Unions and other subordinate bodies are authorized, through duly adopted Bylaws and with the approval of the General President, to place such specific limitations as the circumstances warrant on the right of members who hold supervisory positions to hold office and participate in the affairs of their organizations.

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Eligibility to Office

Section 4 (a) (1). To be eligible for election to any office in a Local Union, a member must be in continuous good standing in the Local Union in which he is a member and in which he is seeking office for a period of twenty-four (24) consecutive months prior to nomination for said office. "Continuous good standing" means compliance with the provisions of Article X, Section 5 concerning the payment of dues for a period of twenty-four (24) consecutive months, together with no interruptions in active membership in the Local Union for which office is sought because of suspensions, expulsions, withdrawals, transfers or failure to pay fines. A Local Union in its Bylaws may require that a member, to be eligible for election to any office in the Local Union, must have attended a minimum number of the regular or divisional meetings of the Local Union, but not to exceed fifty percent

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(50%), during the twenty-four (24) consecutive months prior to nomination. In the instance where a Local Union adopts the International Constitution and Bylaws as its Bylaws, it shall be presumed that the Local Union has adopted the above-stated requirement of fifty percent (50%) minimum attendance as a qualification for office.

(2). To be eligible for election to any office in a Local Union, a member must have complied with the requirements of Section 4 (a) (1) and in addition must have worked for a period of two (2) years as a member under the jurisdiction of the Local Union in which he is seeking office; provided, however, that the General Executive Board, upon good cause shown, may waive the requirement of having worked under the jurisdiction of the Local for the two (2) year period.

(3). To be eligible for office in the International Union, or a subordinate body other than a Local Union, a member must have complied with the requirements of Section (4) (a) (1) and in addition must be or have been an officer, organizer or Business Agent of the International Union or a Local Union thereof; provided, however, that an officer of a Local Union chartered less than twenty-four (24) months, unless chartered as a result of split-off or merger, shall not be eligible for office in the International Union.

(4). The requirement of continuous good standing and working in the jurisdiction and the obliga-

tion to take a transfer card or an honorable withdrawal card as provided in this Constitution shall not be applicable to any officer or employee during a leave of absence granted to such officer or employee with the approval of the Local Union Executive Board.

(b). In newly chartered Local Unions which have been in existence for less than twenty-four (24) months, a candidate for Local Union office must be a member and in continuous good standing in such Local Union and must have worked under its jurisdiction as a member for at least half of the period of time since the Local Union was separately chartered by the International Union.

(c). In newly chartered Local Unions, chartered as a result of split-off or merger, a candidate must be a member of the newly chartered Local Union, must have worked in the jurisdiction for a total period of two (2) years, and for a total period of twenty-four (24) consecutive months prior to nomination must be in continuous good standing on a cumulative basis in the newly chartered Local Union and the Local Union from which the newly chartered Local Union was split off or with which the newly chartered Local Union was merged.

(d). To be eligible for election to any office in a Local Union a member who has been transferred from one Local Union to another Local Union as a result of merger or the dissolution of his former Local Union must have worked for a total period

of two (2) years on a cumulative basis as a member under the jurisdiction of the Local Union in which he is a member and the Local Union from which he has been transferred, and must have been in continuous good standing on a cumulative basis in both Local Unions for a total of twenty-four (24) consecutive months prior to nomination.

(e). The requirement herein of having worked in the jurisdiction as a member shall not be construed to prevent any member holding Local Union office or employed as a full-time organizer for the International Union at the time of the 1952 International

Convention from being eligible for subsequent elections to office in a Local Union or election to office in the International Union or any subordinate body or as a delegate to International Conventions.

(f). The eligibility requirements of subparagraph (a) (1) and (2) of this Section 4 shall apply to members of Local Union Executive Boards, elected Business Agents of Local Unions, delegates to Central Bodies or other subordinate bodies of this International Union, and delegates to all conventions of labor and to the Conventions of the International Brotherhood of Teamsters.

(g). Elected officers of the International Union, Local Unions and other subordinate bodies shall be delegates to other subordinate bodies, Conventions of the International Brotherhood of Teamsters, and all other conventions by virtue of their

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office and in accordance with applicable provisions of this Constitution and the Bylaws of such other subordinate bodies.

(h). The General Executive Board, upon good cause shown, may waive any or all the eligibility requirements of this Section 4 in connection with an election being conducted in a Trusteed Local Union as a preliminary step to the release of the Local Union from trusteeship pursuant to the provisions of Article VI, Section 5 (f).

ARTICLE III

CONVENTION AND REPRESENTATION

Conventions

Section 1. The International Convention shall be the supreme governing authority of the International Union and shall have

the plenary power to regulate and direct the policies, affairs and organization of the International Union.

The Convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be held every five (5) years at such time and place as may be designated by the General Executive Board upon the recommendation of the General President. The General Secretary-Treasurer shall issue a call for the Convention not less than ninety (90) calendar days prior to the date of meeting, unless otherwise directed by the General Executive Board. In the event of

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an emergency as determined by the General Executive Board which prevents the holding of a Convention in accordance with the provisions herein set forth, the same shall be held as soon thereafter as possible, in accordance with the intent and spirit of the Constitution.

Basis of Representation

Section 2. Each Local Union having one thousand (1000) members or less shall be entitled to one (1) delegate and one (1) delegate for each additional seven hundred fifty (750) members or major fraction thereof, but in no case shall a delegate have more than one (1) vote, even though he may also be a delegate from the International Union or from more than one subordinate body. No proxy vote will be allowed. (See also Article VII, Section 5.)

Requisites for Representation

Section 3 (a). Except as provided in Section 3 (c), no Local Union shall be entitled to representation in the Convention that

has not been chartered, affiliated and in good standing for a total of six (6) months prior to the opening of the Convention.

(b). No Local Union shall be entitled to representation in the Convention which at the time of the call of the Convention is six (6) months or more in arrears in moneys due to the International Union or to any subordinate body thereof with which such Local Union is affiliated, or which, if less than six (6) months in arrears, has not paid

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all such arrearages in full at least three (3) days prior to the opening of the Convention, excepting those moneys due for the last month, which amounts must be paid by the beginning of the Convention. If the circumstances warrant, the General Executive Board may waive any of the foregoing requirements.

(c). The General Executive Board is empowered to grant full representation to any Local Union which has been affiliated with the International Union for less than six (6) months when such Local Union was formerly an independent Local Union or was formerly affiliated with an international union other than the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or was chartered as a result of split-off or merger.

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Credentials Committee

Section 7 (a). The General President shall, preceding each Convention, appoint from the delegates elect a committee of not less than seven (7) to act as a Credentials Committee. Said Committee shall meet at the place of holding the Convention five (5) days prior to the opening of the Convention. The General President or his representative and General Secretary-

Treasurer shall also be members of said Committee. To this Committee shall be referred all credentials. This Committee shall have a partial or complete report in writing ready for the Convention when it opens. All hearings of the Credentials Committee shall be held in the Convention city.

(b). It shall be the duty of the Credentials Committee to examine credentials and to make the initial decision on challenges. It shall be presumed that all delegates who have submitted credentials in the form required to the General Secretary-Treasurer or to the Credentials Committee have been properly selected as delegates from their subordinate body, and such delegates may vote upon the acceptance or rejection of the Credentials Committee's report, in whole or in part, and on other matters which come before the Conven-

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tion. Only those delegates who are present and seated at the time the report of the Credentials Committe is submitted may vote upon the acceptance or the rejection of such report.

(c). The appointed members shall receive as compensation for their extra services such expenses and remuneration as the General Executive Board may determine.

Constitution and Other Committees

Section 8. The General President is authorized to appoint from the membership a Constitution Committee which shall prepare proposed amendments to the International Constitution for submission to the Convention. The General President at his discretion is also authorized to appoint such other committees from the membership as he may determine will facilitate the work of the Convention. The appointed members shall receive as compensation for their extra services such expenses and remuneration as the General Executive Board may determine.

Amendments to Constitution; Resolutions

Section 9 (a). Thirty (30) days prior to each Convention, Local Unions, Local Union officers, members in good standing, or the general officers shall have the right to send to the General President proposed amendments or additions to the Constitution, or resolutions, which shall be submitted to the Constitution Committee when it meets. This

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shall not deprive delegates to the Convention of their right to propose amendments or additions to the Constitution during the Convention or to submit resolutions or amend resolutions during the Convention in accordance with the rules governing the Convention. However, in all instances a proposed amendment or addition to the Constitution, or a resolution or amendment to a resolution shall be referred to the Constitution Committee.

(b). Amendments to the Constitution and all other action of the Convention shall be adopted by a majority vote of the delegates present, seated and voting at the time of submission of the amendment or other proposed action to the Convention. Amendments shall become effective immediately upon their adoption unless otherwise specified in any particular amendment adopted by the Convention.

(c). The General Executive Board shall have the power, following Convention adoption of amendments to this Constitution, but prior to printing thereof, to make such typographical, grammatical, and punctuation corrections, rearrangements and renumbering of articles and sections, or otherwise, including the supplying or remedying of inadvertent omissions or errors, as are necessary to carry out the spirit and intent of any amendments so adopted.

(d). The General President shall determine and may change the order of business at the Convention at any time.

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(e). The time within which certain actions must be taken as set forth in this Article, other than the time of holding the International Convention, may be waived by the General President and General Secretary-Treasurer upon good cause shown, with a right of appeal to the General Executive Board.

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ARTICLE IV

OFFICERS, DELEGATES AND ELECTIONS

International Officers

Section 1 (a). The officers of the International Brotherhood of Teamsters shall consist of a General President, General Secretary-Treasurer, General Vice President, twelve (12) Vice Presidents, and three (3) Trustees. The General President, the General Secretary-Treasurer, the General Vice President and the twelve (12) Vice Presidents shall constitute the General Executive Board.

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(b). Vice Presidents, other than the General Vice President, shall be known as First, Second, Third, etc., in accordance with their seniority on the General Executive Board.

(c). Not more than one (1) Vice President from any one (1) state, Canadian province or similar governmental subdivision of another country can be elected to hold or appointed to a position

entitling him to a seat on the General Executive Board, provided that this provision shall not disqualify any member of the General Executive Board as of the 1961 Convention from continuing in such position and from eligibility for re-election at the 1961 and subsequent Conventions. The officers of the International Union shall as nearly as practicable be uniformly distributed throughout the entire country. The provisions of this subsection shall not apply to the office of General Vice President.

(d). The term of office of all International Union officers shall be five (5) years, or the interval between regular Conventions, whichever is the longer, and until their successor is qualified and sworn, subject however to the provisions of Article IX, Section 8.

Election of Officers

Section 2. All nominations for International offices shall be made in open Convention and elections shall be by roll call where there is more than one (1) candidate for any office. No roll call vote shall

be necessary where there is only one (1) candidate for such office, and such candidate shall be declared elected. It shall require a plurality of all votes cast to constitute an election. This shall not apply to Trustees, but in their election each delegate must vote for three (3) candidates for Trustees and the three (3) candidates receiving the highest number of votes shall be declared elected. No roll call vote shall be necessary where only three (3) candidates are nominated for Trustees, and the three (3) candidates shall be declared elected.

Candidates must accept nomination in person at the time made or, if absent, by written acceptance filed with the General

Secretary-Treasurer one day prior to nominations, and a candidate may accept nomination for one International Union office only.

All officers shall be installed on the last day of the Convention and assume their official duties immediately following the adjournment of the Convention.

Delegates to Conventions and Meetings; Expenses; Unit Rule

Section 3. All delegates representing the International Union at conventions or meetings of any other labor organization or federation of labor organizations, national or international, shall be appointed by the General President and shall perform such functions as the General President may prescribe.

All expenses and allowances of the above delegates shall be paid by the International Union, the amount to be determined by the General President.

The unit rule shall prevail in all votes cast among the delegates representing the International Union at such conventions and meetings.

ARTICLE V

SALARIES AND EXPENSES OF OFFICERS

Section 1 (a). The salary of the General President shall be one hundred thousand dollars ($100,000.00) per year; the salary of the General Secretary-Treasurer shall be seventy-five thousand dollars ($75,000.00) per year. All expenses of the General President and the General Secretary-Treasurer shall be paid by the International Union.

The salary and expenses of the General Vice President in connection with his duties in that capacity shall be determined by the General President subject to the approval of the General Executive Board.

(b). The Vice Presidents, other than Vice Presidents who are full-time organizers, shall receive a salary of one thousand five hundred dollars ($1,500.00) per month as compensation for attending board meetings and for representing the interests of the International Union. The three (3) Trustees, if not full-time organizers, shall receive a salary of nine hundred dollars ($900.00) per month as com-

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pensation for performing their duties as Trustees and for representing the interests of the International Union. When engaged in other duties under orders from the General President, the Vice Presidents and Trustees who are not full-time organizers shall, in addition, receive the same pro rata salary as organizers, but in no event shall their salary from the International Union exceed twenty-five thousand dollars ($25,000.00) per year.

The provisions for compensation and allowances contained in this entire Article shall be in addition to any compensation and allowances which may be received from subordinate bodies.

(c). The person holding the position of Executive Assistant to the General President while working under orders of the General President shall be paid a salary, allowances and expenses fixed by the General President.

(d). International or Special Organizers shall be appointed by the General President and while working under his orders shall be paid a sum fixed by the General President not to exceed twenty-five thousand dollars ($25,000.00) per year.

(e). The Vice Presidents, Trustees, executive officers and the Organizers of the International Union, except as otherwise provided herein shall be allowed seven dollars and fifty cents ($7.50) per diem as an incidental allowance. All organizers other than Special Organizers shall be allowed the sum of two hundred dollars ($200.00) per month

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as an automobile allowance. All executive officers, organizers and others working outside of their home city, or when traveling in the interest of the organization, shall receive their fare in addition to the above-named sum to and from their destination, and in addition shall receive a sum of twenty-five dollars ($25.00) per diem. On special assignments, allowances, per diems and expenses shall be as determined by the General President.

(f). The salaries, allowances and expenses of International and Special Organizers and the International Directors of Area Conferences shall be determined by the General President.

(g). All salaries of, or powers to establish them for, general officers shall be determined by the Convention prior to the election of officers. The General Executive Board, except as may otherwise be provided herein, shall have the authority to fix salaries, allowances and expenses of all officers, employees and representatives and allowances for general officers.

The General Executive Board may provide such accommodations by purchase, lease or otherwise, as it believes desirable for the housing of officers and employees while on official union business and require the use thereof.

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ARTICLE VI

GENERAL PRESIDENT—DUTIES AND POWERS

General Duties

Section 1 (a). The General President shall preside at the Convention of the International Brotherhood of Teamsters and conduct the same in conformity with this Constitution. He shall have the deciding vote in case of a tie on any question that

is being voted on by the Convention. He shall act to the best of his ability in furthering the interests of the organization. He shall fill any vacancy among the officers of the International Union, subject to the approval of the majority of the General Executive Board.

(b). The General President shall have general supervision over the affairs of the International Union, which shall be conducted in accordance with the Constitution and subject at all times to review and approval of the General Executive Board.

(c). The General President and the other general officers may hold office in subordinate bodies and render services thereto.

(d). The General President may accept a call to serve by the government of the United States; and if such call is made and he believes that it is in the best interests of the International Union to accept, his position and remuneration as now outlined in the Constitution shall not be interfered with and shall continue.

(e). The General President may, without the approval of the General Executive Board, appoint a member of the International Union as Executive Assistant to the General President,

who shall receive a salary for the term of his appointment as set forth in Article V, Section 1 (c).

(f). The General President may appoint and designate a Personal Representative who shall act on

behalf of the General President as the General President may determine, including the right to attend meetings of any subordinate body of the International Union.

(g). The General President shall be empowered to appoint and fix the salaries of one (1) or more Assistants to the General President to carry on his work if he deems it necessary.

(h). The General President shall have the authority at his discretion to direct that a referendum vote, or a vote by membership in meeting assembled, be held by the membership of any Local Union or subordinate body or the membership in any division or craft of any Local Union or subordinate body or the membership at any place of employment or under any specific contract or on any other similar basis on any matter, issue or proposition when, in his opinion, the welfare of such membership or the subordinate body or the Local Union or the International Union will be served thereby.

Judicial Powers

Section 2 (a). The General President shall have authority to interpret the Constitution and laws of the International Union and to decide all questions of law thereunder between meetings of the General Executive Board, and shall have authority, unless some other procedure is expressly provided in this Constitution, to settle and determine all grievances

and disputes submitted to him by Joint Councils, Local Unions and other subordinate bodies or members, between meetings of the General Executive Board, all subject to appeal to the General Executive Board, and, thereafter to the next Convention in the manner and to the extent prescribed in this Constitution. When any action is taken as provided herein between meetings of the General Executive Board such action shall be reported to the next meeting of the General Executive Board for its approval, reversal or modification, if an appeal has been taken.

(b). When the General President makes a decision or orders a subordinate body to observe the laws, and the subordinate body refuses, the subordinate body shall be subject to suspension or revocation of charter by the General Executive Board or imposition of Trusteeship by the General President. This provision shall also apply to decisions and orders of the General Executive Board.

Arbitration

Section 3. In any controversy with an employer not covered by a Local Union agreement, the Local Union shall make all reasonable efforts to settle the same through negotiation and, if it fails, through a fair arbitration tribunal. If an employer offers to arbitrate, it shall be optional with the Local Union to accept or reject such arbitration. However, if the

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Local Union rejects arbitration and the matter is brought to the attention of the General President, he shall ask the officers or representatives of the Local Union to appear before him or his representative or in some other manner to explain their reasons for refusal. If the General President is satisfied that the Local Union is not justified in refusing arbitration, then the General President shall submit the matter to the General Executive Board, and if the General Executive Board is of the opinion that the Local Union should arbitrate, it may so decide; whereupon the Local Union shall proceed to carry out the decision of the General Executive Board.

Approval of Bylaws of Local Unions

Section 4 (a). Bylaws of Local Unions and other subordinate bodies and amendments thereto shall be subject to the approval of the General President. If the General President fails to approve the Bylaws, the matter may be referred by the subordinate body to the General Executive Board for its determination.

(b). Local Unions shall not adopt Bylaws or take any action which would impair their ability to meet their financial obligations to the International Union and its subordinate bodies or interfere with the discharge of their obligations to their members in the negotiation and administration of collective bargaining agreements and in conducting the affairs of the Local Union as a solvent organization.

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Power of General President to Appoint Trustees; Duties and Obligations of Local Unions Under Trusteeship

Section 5 (a). If the General President has or receives information which leads him to believe that any of the officers of a Local Union or other subordinate body are dishonest or incompetent, or that such organization is not being conducted in accordance with the Constitution and laws of the International Union or for the benefit of the membership, or is being conducted in such a manner as to jeopardize the interests of the International Union, or its subordinate bodies or if the General President believes that such action is necessary for the pur-

pose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures or preventing any action which is disruptive of or interferes with the performance or obligations of other members or Local Unions under collective bargaining agreements. or otherwise carrying out legitimate objects of the subordinate body, he may appoint a temporary Trustee to take charge and control of the affairs of such Local Union or other subordinate body; provided, however, that before the appointment of such temporary Trustee, the General President shall set a time and place for a hearing for the purpose of determining whether such temporary Trustee shall be appointed, and further provided

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that where, in the judgment of the General President, an emergency situation exists within the Local Union or other subordinate body, the temporary Trustee may be appointed prior to such hearing, but such hearing shall then commence within thirty (30) days and decision made within sixty (60) days after the appointment of such temporary Trustee; and further provided that in all cases the Local Union or other subordinate body shall be advised of the reason for the appointment. Adequate notice at least ten (10) days prior to the date of the hearing shall be given to the Local Union or other subordinate body involved. In the case of all hearings conducted prior to; or after the establishment of a Trusteeship, the General President shall designate a panel comprised of at least one (1) International Union Vice President and one (1) disinterested member of the International Brotherhood of Teamsters from the area involved. The General President may, at his discretion, appoint an employee of the International Union to such panel. Such representatives shall make their recommendations to the General President orally or in writing within thirty (30)

days after the furnishing of the transcript of testimony, and the decision in the case shall be made by the General President himself, which decision shall be made within ten (10) days after such recommendations are received by him, and the decision shall be promptly transmitted to the Local Union or other subordinate body. Appeals, if any, from determinations following such hearings shall be taken

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directly to the General Executive Board. Appeals, if any, from the decision of the General Executive Board shall be taken to the Convention by only the Local Union or subordinate body affected. Procedures on appeals under this Section, insofar as is consistent with this Section, shall be governed by the provisions of Article XIX. The International Union shall not be responsible for any actions or activities of a Local Union or other subordinate body under Trusteeship unless such actions or activities have been directed or authorized by the Trustee.

The General Executive Board may modify or add to the procedures established herein for the purpose of assuring compliance with any applicable law.

(b). The Trustee shall be authorized and empowered to take full charge of the affairs of the Local Union or other subordinate body, to remove any or all officers and appoint temporary officers at any time during his Trusteeship, and to take such other action as in his judgment is necessary for the preservation of the Local Union or other subordinate body and its interests. The terms of office of officers so removed shall terminate as of the date of removal, unless otherwise absolved. The Trustee shall report from time to time on the affairs and transactions of the Local Union or other subordinate body of the General President. His acts shall be subject to the supervision of the General President. The General

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President may remove Trustees at any time and may appoint successor Trustees.

(c). The removed officers shall turn over all moneys, books and properties of the Local Union or other subordinate body to the Trustee, who must receipt for the same.

(d). Temporary officers and Trustees must be members in good standing of Local Unions in good standing. They must give bonds for the faithful discharge of their duties, satisfactory to whoever appointed them, which shall not be less than the amount of money they are apt to handle.

(e). The Trustee shall take possession of all the funds, books, papers and other property of the Local Union or other subordinate body and tender a receipt for same. He shall pay all outstanding claims, properly proved, if funds are sufficient. If the funds are not sufficient he shall settle the most worthy claims, as his judgment dictates, unless otherwise provided for in this Constitution. In the event the charter of the Local Union or other subordinate body is suspended or revoked, all its funds, books, papers and other properties shall be forwarded to the General Secretary-Treasurer, who shall hold them for the purpose of reorganization. If no reorganization occurs within a period of two (2) years, such funds shall be transferred to the general fund.

(f). In all cases of Trusteeships, the Trustee shall make a report to the General President at intervals

of no more than every six (6) months, which report shall contain his recommendations with respect to whether the Trusteeship shall be continued or terminated.

The first (1st) such report shall be made within six (6) months after the date of the decision following the hearing on the appointment of a Trustee.

Additionally, the Local Union, or other subordinate body in regular or special membership meeting, by a majority vote, may petition the General President for the restoration of self-government, provided that no such petition shall be presented at intervals of less than six (6) months starting with the date of the decision following the first hearing on the appointment of the Trustee.

When a Local Union or other subordinate body petitions for restoration of self-government as herein provided, it shall be accorded a hearing which shall be commenced within thirty (30) days and decision made within sixty (60) days after the receipt of the petition, which hearing shall be held in the same manner as provided in Section 5 (a) of this Article relative to hearings on initial appointment of Trustees.

When it is determined by the General President or the General Executive Board that self-government be restored, the Trustee shall direct an election at such time as he may designate, any other provision of this Constitution or Local Union rules or Bylaws to the contrary notwithstanding. The

Trustee shall not install the officers elected at such election until directed to do so by the General President. Upon such installation the Trusteeship shall terminate and the Trustee shall return all remaining funds, property, books and papers to the appropriate officers of the Local Union or other subordinate body. Subsequent to the release of the Local from Trusteeship a terminal audit shall be prepared. The term of office of the newly elected officers shall be for not more than three (3) years in the case of a Local Union, or four (4) years in the case of any other subordinate body, and the next election for officers shall take place in compliance with the provisions of Article XXII, Section 4 in the November or December closest to and preced-

ing the expiration of the three-year or four-year period, as the case may be, following the initial election.

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ARTICLE VII

GENERAL SECRETARY-TREASURER—DUTIES AND POWERS

Issuance of Charter

Section 3. All charter applications must be signed by no less than seven (7) prospective members employed within the jurisdiction of the International Union, and before final issuance, must be approved by the General President, the General Secretary-Treasurer and the General Executive Board.

All Local Union charter applications must initially be submitted to the Joint Council or to the Conference (if there is no Joint Council) having jurisdiction in the area, which shall then forward such application to the General Secretary-Treasurer with an indication of whether such application has the approval or disapproval of such body. All other charter applications shall be submitted directly to the General Secretary-Treasurer. The General Secretary-Treasurer shall submit all charter applications to the General Executive Board. In determining whether to issue a Local Union charter, the General President, the General Secretary-Treasurer and the General Executive Board shall take into consideration, but shall not be bound by, the position of the Joint Council or Conference in the matter. If the General President, the General Secretary-Treasurer and the General Executive Board approve

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the issuance of a charter, the General President and the General Secretary-Treasurer shall sign and the General Secretary-Treasurer shall issue and deliver the charter to the organization for which application for charter has been made. Such charter shall be revoked unless within thirty (30) days after the election of officers of the organization, the contract set forth below has been signed by the President and Secretary-Treasurer of such organization and returned to the General Secretary-Treasurer.

Charters may be issued to a Local, the territorial jurisdiction of which shall not be limited to any particular geographic area, upon such terms and under such conditions as the General Executive Board shall consider appropriate, notwithstanding any other provisions of this Constitution.

Affiliation with, and the issuance of a charter by, the International Union and compliance with all the provisions and requirements of this International Constitution are in no way conditioned upon the affiliation or non-affiliation of the International Union with any other organization either at the time of the issuance of a charter or subsequent thereto.

Charter Contract

The General Executive Board shall have the authority to change the jurisdiction granted or set forth in the Charter at any time in its sole discretion.

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The following Charter Contract and the rights, duties and obligations set forth therein are a part of this Constitution as though set forth in a separate Article herein:

Know all men by these presents, that I, ...
....., Secretary-Treasurer of the .....
..... Local Union (Joint Council or other

subordinate body), located at ..... being authorized to act for said Local Union (Joint Council or other subordinate body), in consideration of the General Secretary-Treasurer's issuing a charter to said Local Union (Joint Council or other subordinate body) hereby agree: that said charter shall remain the property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and in consideration of the premises herein stated, when the charter is framed, the frame shall immediately become the property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; that said Local Union (Joint Council or other subordinate body) shall have custody of said charter until it is demanded by some person authorized to make such demand, in accordance with the International Constitution, and the charter and frame shall then be delivered to the person so authorized to demand and produce the same; and that any person so authorized may enter any premises occupied by the said Local Union

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(Joint Council or other subordinate body) or any of its members and take possession and remove the said charter.

I do further recognize and acknowledge in behalf of Local Union ..... (Joint Council or other subordinae body) that the name and all rights and privileges hereunder are granted this Local Union (Joint Council or other subordinate body) by the International Union, and that all books, documents, contracts, name, moneys, funds and property of any nature and description which may be obtained, accumulated and maintained by this Local Union (Joint Council or other subordinate body) will result, be obtained, accumulated or maintained by the granting of this charter and the rights and privileges thereunder; and that therefore, in the event this charter is revoked, or this Local Union becomes de-

funct, all books, documents, contracts, name, moneys, funds and property shall belong to and shall be delivered over to the International Union by it to be retained, as provided for in Article X, Section 14 of the Constitution, until the charter is reinstated or a successor Local Union (Joint Council or other subordinate body) or Local Unions (Joint Councils or other subordinate bodies) are chartered.

I do further agree in behalf of Local Union .....
..... (Joint Council

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or other subordinate body) that it will abide by the provisions of the International Constitution and amendments thereto, all of which are incorporated herein by reference.

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By its Secretary-Treasurer

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Method of Determining Representation

Section 5. The General Secretary-Treasurer, on sending out credentials, shall figure for a two-year period ending four (4) months preceding the opening date of the next Convention to ascertain the per capita tax paid by Local Unions and the number of delegates given to Local Unions shall be upon this basis; provided, however, in cases of the split-off of Local Unions occurring during the two-year period, the per capita averaging for each Local Union involved shall be based upon the period beginning with the date of the split-off and ending four (4) months preceding the opening date of the next convention; provided further, however, that if such split-off occurs within six (6)

months of the opening day of the Convention and, if the General Executive Board, pursuant to Article III, Section 3 (c) has determined that the newly chartered Local Union is entitled to full representation at the Convention, the per capita averaging for both Local Unions shall be based upon the period from the date of split-off through the month immediately preceding the Convention Call. Where it is not possible to hold the Convention at the time prescribed by Article III, Section 1, because of an emergency, the additional per capita tax payments involved shall be taken into consideration in computing the average monthly membership for the determination of the number of delegates to which the Local Union shall be entitled. (See also Article III, Section 2.)

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Finances

Section 6 (a). The General Secretary-Treasurer shall receive moneys due from all sources and in the case of subordinate bodies shall give his receipt therefor. All moneys shall be placed in banks, depositories or vaults approved by the General Executive Board in the name of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

(b). At least twenty-five percent (25%) of the funds and assets of the International Union (exclusive of real estate, buildings and furnishings) shall be kept in interest-bearing bank accounts and short-term government obligations as directed by the General Executive Board.

Audits

Section 7 (a). The books of all Local Unions may be audited to the extent prescribed by the General Executive Board at least once between Conventions by an International Union

Auditor, or by a Chartered or Certified Public Accountant as directed by the General Executive Board under the supervision of the General Secretary-Treasurer. For that purpose the General Secretary-Treasurer shall appoint International Auditors, and their salaries, per diem and expenses shall be fixed in accordance with the provisions of Article V, Section 1 (d) and (e), the number of such auditors to be determined by the General Executive Board. The General

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Secretary-Treasurer, when he deems it for the best interest of the International Union, is hereby empowered to remove any International Auditor, with the approval of the majority of the General Executive Board.

(b). All subordinate bodies and joint operations, whether they be within this International Union or with other international unions, which receive any donations, advances, matching funds or special payments of any nature from the International Union shall keep full financial records respecting same and the manner in which they are expended.

The books of every subordinate body shall be audited by a Chartered or Certified Public Accountant at least once a year. The books of joint organizing funds may be audited by a Chartered or Certified Public Accountant at the discretion of the General Secretary-Treasurer. Copies of all annual or terminal audit reports, whether prepared by an International Auditor or a Chartered or Certified Public Accountant, shall be forwarded to the General Secretary-Treasurer. Also, all subordinate bodies must send to the General Secretary-Treasurer copies of all financial reports setting forth a statement of assets and liabilities and a statement of receipts and disbursements which are required by law. (See also Article X, Section 10.)

Notification of Local Unions in Arrears

Section 8. It shall be the duty of the General

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Secretary-Treasurer to notify the Secretary-Treasurer, the President and the three (3) Trustees of the Local Union when said Local Union becomes in arrears for per capita tax.

Seals, Stamps and Supplies

Section 9 (a). The General Secretary-Treasurer shall procure all seals and supplies and furnish same to all Local Unions desiring them. It shall become compulsory upon all Local Unions to procure from the International Union, with the exception of letter paper and envelopes, all supplies carried by the International Union, as listed from time to time on International Union order blanks furnished for that purpose.

(b). Individual members of Local Unions shall not have the power to duplicate the buttons or paraphernalia issued by the International Union. Permission may be granted by the General Secretary-Treasurer to subordinate bodies to procure other minor International supplies in their several localities.

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ARTICLE IX

GENERAL EXECUTIVE BOARD— DUTIES AND POWERS

General

Section 1. Such powers, duties and authority as are not otherwise delegated to the General Presi-

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dent and General Secretary-Treasurer of the International Union shall be exercised, acted upon, and determined by the General Executive Board. The General Executive Board shall have the authority to interpret and apply the Constitution and laws of the International Union and to decide all questions of law thereunder subject to appeal to the next Convention. The General Executive Board shall have governing authority over the International Union and its subordinate bodies to the end of upholding the laws and policies of the Brotherhood as expressed in this Constitution.

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Revocation and Suspension

Section 3 (a). Unless otherwise provided in this Constitution, the General President or the General Secretary-Treasurer, when he deems it necessary to suspend or revoke a charter, shall immediately notify the members of the General Executive Board for their approval of same.

(b). Any Local Union suspended by the General Executive Board shall lose, for the period of

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its suspension, all privileges of the International Union.

Power to Debar From Membership

Section 4 (a). In the case of the revocation or forfeiture of a charter of a Local Union the members thereof, without loss of continuous good standing, may be transferred to another Local Union in the area or such Local Union may be reorganized and such members may be transferred thereto. Upon such transfer the General Executive Board shall have the power, following a hearing, to exclude from membership in the new Local Union persons who were in any way responsible for the revocation or forfeiture of the charter or who the General Executive Board has reason to believe are disloyal to the International Union or who may cause disruption in the newly organized Local Union.

(b). With respect to new applicants to any Local Union, the General Executive Board shall have power to deny membership in the International Union to any such applicant when it believes the interest of a Local Union or the International Union will be best served by so doing.

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Meetings of General Executive Board

Section 6. The General Executive Board shall hold quarterly meetings at such specific time and place as shall be determined by the General President. At the discretion of the General President a quarterly meeting may be held within one (1) month after the end of the quarter. Upon the written request of a majority of the General Executive Board to the General President, it shall be the duty of the General President to call a meeting of the General Executive Board within thirty (30) days. A

majority of the members of the General Executive Board shall constitute a quorum for the transaction of its business.

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Mergers

Section 12. The General Executive Board in its discretion shall have the power to merge Local Unions and other subordinate bodies under such terms and conditions and subject to such qualifications as the General Executive Board may determine, taking into consideration such circumstances as financial conditions, jurisdiction, location, and such other factors as appear appropriate in connection with the Local Unions and other subordinate bodies involved.

In this connection the General Executive Board may, in its discretion, conduct a referendum vote among all of the members of the Local Union or subordinate body, or of the members in any division, craft or place of employment, or under any specific contract or on other similar basis as the General Executive Board may determine. The result of such referendum, if conducted, shall be advisory only.

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ARTICLE X

REVENUES, BONDING, EXAMINATION AND AUDITS OF SUBORDINATE BODIES, AND DISPOSITION OF ASSETS

Revenue

Section 1. The normal operating income of the International Brotherhood of Teamsters shall be derived as follows:

(a). Charter fee, which includes charter, seal and all other organization supplies, twenty-five dollars ($25.00).

(b). Sale of other supplies.

(c). Initiation and reinitiation fees and per capita tax.

Assessments for Emergencies

Section 2. Whenever the assets of the International Union, except for the Washington, D. C. real properties, run below twenty million dollars ($20,000,000.00) the General Executive Board shall levy an assessment of one dollar ($1.00) per member per month on all Local Unions, until such assets reach twenty-five million dollars ($25,000,000.00). Any Local Union failing to pay the assessment shall not be entitled to any of the benefits of the International Union. After being properly notified and given a reasonable length of time, if the Local

Union further refuses to pay the assessment, said Local Union shall be suspended. Any Local Union failing to pay the assessment shall not be represented at the International Convention.

Payment of Initiation Fees, Reinitiation Fees and Per Capita Tax

Section 3 (a). Each Local Union shall pay to the General Secretary-Treasurer the sum of two dollars and fifty cents ($2.50) for every initiation fee or reinitiation fee collected.

(b). Each Local Union shall pay to the General Secretary-Treasurer a per capita tax of one dollar and fifty cents ($1.50) per month, payable for the current month not later than the

twentieth (20th) day of the succeeding month unless otherwise determined by the General Executive Board in extreme hardship cases.

The present one dollar ($1.00) per capita tax shall continue through September, 1966, payable in October, 1966, and the per capita tax of one dollar and fifty cents ($1.50) shall become effective October 1, 1966, payable for the month of October in November unless otherwise determined by the General Executive Board as above provided.

Per capita tax must be paid not only on dues-paying members but also on all persons paying agency shop fees, periodic service fees and hiring hall fees to the Local Union.

Persistent failure of a Local Union to comply with this subsection shall subject the Local Union to charges by the General Executive Board only.

(c). The General Secretary-Treasurer shall receipt for all initiation fees and per capita tax.

(d). Dues of members of the International Union, payable through their respective Local Unions, shall not be less then six dollars ($6.00) per month; provided, however, that the General Executive Board shall have the authority to reduce the foregoing minimum in extreme hardship cases. All dues, whether below, at, or above the minimum of six dollars ($6.00) per month shall be increased by no less than one dollar ($1.00) per month no later than October 1, 1966, unless otherwise determined by the General Executive Board in extreme hardship cases. In the case of Local Unions chartered after the 1966 Convention, unless otherwise approved by the General Executive Board the dues of the members of such Local Unions shall not be less than five

dollars ($5.00) for the first (1st) year following such chartering and thereafter the six dollars ($6.00) minimum shall apply.

In the event that the provisions relating to increased revenue adopted by the 1966 Convention cannot be effectuated, the General Executive Board shall have the authority from time to time to amend, modify or defer the provisions of this Constitution relating to the increase of fifty cents (50¢) reflected in the new per capita tax of one dollar and fifty cents ($1.50); provided, however, that the

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General Executive Board shall not be authorized by this provision to increase dues or per capita taxes to an amount greater than the six dollars ($6.00) minimum dues and the one dollar and fifty cents ($1.50) per capita tax set forth above.

The provisions of the first paragraph of Section 3 (d) shall become effective October 1, 1966.

(e). Area Conferences shall be financed by the payment of a monthly five cent (5¢) per capita tax by the International Union to the Area Conference. Local Unions affiliated with Area Conferences shall pay a minimum of ten cents (10¢) per month per member to their respective Area Conferences.

Preferred Payment of Per Capita Tax

Section 4. All per capita tax due the International Union and chartered subordinate bodies shall have priority over any other bills or obligations of the Local Union. The order of priority shall be as follows: (1) International Union; (2) Area Conferences; (3) Joint Councils; (4) State Conferences; (5) other chartered subordinate bodies.

Payment of Dues and Fees and Receipt Therefor

Section 5 (a). Any member paying his initiation fee, monthly dues, or reinitiation fees shall be given a receipt by the Local Union in a manner prescribed by the General Secretary-Treasurer as approved by the General Executive Board.

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(b). Every member when requested to do so by a proper representative of the International Union or subordinate body shall be required to present evidence establishing membership in good standing.

(c). All members paying dues to Local Unions must pay them on or before the last business day of the current month. Payment within the meaning of this Section shall mean receipt by the Local Union. Any member failing to pay his dues at such time shall not be in good standing for such month, but may restore such good standing for such month for the purpose of attending meetings, nominating, voting and participating in affairs of the Local Union by the payment of his delinquent dues prior to said meeting. Payment of such dues after their due date shall not restore good standing status for such month or months in computing the continuous good standing status required by Article II, Section 4 of this Constitution as a condition of eligibility for office. Any member who shall be three (3) months in arrears in the payment of dues, fines, assessments, or other charges, shall automatically stand suspended at the end of the third (3rd) month, and shall not be entitled to any rights or privileges as a member of the Local Union or International Union. Local Unions may provide suspension, expulsion or other penalty for a lesser period of arrearages. Any member who has been automatically suspended for failure to pay dues shall be under a continuing obligation to pay dues during the period

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of his suspension. In addition to requiring the payment of delinquent dues, the Local Union may adopt a bylaw provision requiring the payment of a reinitiation fee for entitlement to the rights and privileges of membership. The Local Union may also adopt a bylaw provision granting to the Local Union Executive Board the power to waive on a nondiscriminatory basis the payment of delinquent dues and/or reinitiation fees for good cause shown. Per capita tax shall be paid on all delinquent dues collected.

(d). A Local Union may provide in its Bylaws for the payment of quarterly dues, provided such Bylaws are approved by the General President of the International Union. In any instance where a Local Union has provided for the payment of quarterly dues under this Section, any members thereof failing to pay such quarterly dues in accordance with such provisions shall not be considered in good standing.

(e). No other system of receipting for initiation fees, monthly dues or reinitiation fees will be recognized by the International Union.

(f). A Local Union by bylaw amendment may waive the obligation of shop stewards to pay dues, provided that the waiver shall in no way affect the eligibility of such shop stewards to run for office or their entitlement to any other rights or benefits, and further provided that per capita taxes due to the International Union and subordinate bodies shall be paid by the Local Union.

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Bonding

Section 7 (a). All officers, Business Agents and others who handle funds and property of subordinate bodies shall be suit-

ably bonded. The original bonds shall be retained in the files of the subordinate bodies, and copies shall be promptly forwarded to the office of the General Secretary-Treasurer. The General Secretary-Treasurer may direct an increase or decrease in the amount of bonds when he deems it necessary or advisable.

(b). The General President or the General Executive Board is empowered to suspend or revoke the charter of any affiliate or to place any affiliate in Trusteeship for failure to comply with the provisions of this Section.

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Audit of Books of Subordinate Bodies

Section 10 (a). The General President or General Secretary-Treasurer at his discretion may cause the audit or examination of the books of any subordinate body at any time to the extent that he may determine, such audit to be conducted by any person so designated.

(b). Officers of a subordinate body shall give for examination to the representative delegated to conduct the audit, all books, bills, receipts, vouchers and records, bonds, securities or other evidences of ownership to property or investments of the subordinate body whenever requested.

(c). Any officer of a subordinate body refusing to turn over the books, bills, vouchers or records to the delegated officer shall be subject to discipline

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under the provisions of Article XIX, and shall be liable to expulsion by the General Executive Board. (See also Article VII, Section 7.)

(d). If the representative delegated to audit the books discovers any dishonesty or incompetency in the officers which warrants him in notifying the General President and General Secretary-Treasurer, he shall do so and they shall take whatever action they deem advisable. The representatives auditing books shall make a report to the General President and General Secretary-Treasurer and shall have full power to investigate and examine all assets of the subordinate body wherever located including the right to obtain a certified balance sheet from the bank.

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Penalty for Arrearage

Section 12. Should a Local Union become six (6) months in arrears for per capita tax to the International Union or any subordinate body, its charter shall be subject to revocation by the General Executive Board. The General Secretary-Treasurer shall notify all Local Unions when two (2) months in arrears, but failure to receive such notice shall not

prevent the suspension of the Local Union, should it become three (3) months in arrears.

Return of Funds, Books and Property Upon Revocation or Dissolution

Section 13. When the charter of a subordinate body is revoked, the subordinate body or its officers shall be required to turn over all books, documents, property and funds to the General President or his representative, or to the General Secretary-Treasurer of the International Union, and should a subordinate body secede, disaffiliate, or dissolve or be dissolved, or be suspended, or forfeit its charter, then all books, documents, prop-

erty and funds shall likewise be turned over to the General President, or his representative, or to the General Secretary-Treasurer to be held until such time as the subordinate body may be reinstated or reorganized. If no reinstatement or reorganization occurs within a period of two (2) years such funds shall be transferred to the general fund. However, in no event shall the International Union without its consent become liable for the obligations of a subordinate body which has seceded, disaffiliated, dissolved or been dissolved, or has been suspended, merged or has forfeited its charter.

Expenses Incurred in Recovering Property and Funds; Reorganization

Section 14. Whenever a subordinate body secedes, disaffiliates, or dissolves, or its charter is suspended or revoked, and demand is made upon

such organizations or its officers to deliver to the General President or his authorized representative the records, property and funds of such organization, and such demand is refused, then all expenses, of whatever nature, incurred by the International Union in recovering such records, property and funds, shall be a lawful charge upon the property and funds involved, and on recovery thereof, the International Union shall reimburse itself from the property and funds recovered. All property and funds shall be held by the International Union until reorganization has been effected and shall be returned to the subordinate body when the same has been reorganized. If no reorganization is effected within a two (2) year period, then all properties and funds of such subordinate body shall become the property and funds of the International Union. Reorganization shall be effected by and under the direction of the International Union.

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ARTICLE XII

STRIKES, LOCKOUTS, WAGE SCALES, DISPUTES OVER JURISDICTION

Strike Action by Local Unions

Section 1 (a). When any difficulty or dispute arises between the members of any Local Union and their employers, it shall be the duty of the

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officers of such Local Union to use every possible means of achieving a settlement or resolution of the difficulty or dispute through the processes of collective bargaining.

(b). Contracts may be accepted by a majority vote of those members involved in negotiations and present and voting, or a majority of such members may direct further negotiations before a final vote on the employer's offer is taken, as directed by the Local Union Executive Board. When, in the judgment of the Local Union Executive Board, an employer has made a final offer of settlement, such offer must be submitted to the involved membership and can be rejected only by a two-thirds (⅔) vote of the members involved in the negotiations and present and voting or responding to a referendum mail ballot. If a settlement cannot be reached, the Local Union Executive Board shall order a secret ballot to be taken and it shall require a two-thirds (⅔) majority of those members of the Local Union involved in such negotiations and present and voting to adopt a motion to strike. The ballot must be "Yes" or "No" written on paper ballots or by approved mechanical device which assures secrecy. In the alternative, the Local Union Executive Board may conduct such strike vote by referendum

mail ballot of the membership involved in such negotiations, in which event it shall also require a two-thirds (⅔) majority vote of those responding to the referendum mail ballot to authorize a strike. The failure of such membership to authorize a strike

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upon rejecting the employer's last offer shall require the Local Union Executive Board to accept such last offer or such additional provisions as can be negotiated by it.

A strike may be terminated by a majority vote of the involved members present and voting either by secret ballot or by mail referendum as directed by the Local Union Executive Board. The requirement that the employer's final offer of settlement can be rejected only by a two-thirds (⅔) vote shall not apply during a strike.

In any case where the General President believes that an employer has made a final offer of settlement but the Local Union Executive Board has refused to submit such final offer of settlement to the involved membership, the General President is authorized to submit such final offer to the involved membership by either secret ballot vote at a meeting or by referendum mail ballot.

The General President or the General Executive Board is authorized to direct that strike votes be taken by a referendum mail ballot or that the final offer of settlement before or during a strike shall be taken by referendum mail ballot or by secret ballot vote at a meeting.

The General President or the General Executive Board shall have the authority to conduct, under their supervision, secret ballot votes or mail referendum balloting on such basis as they may determine in accordance with Article VI, Section 1 (h),

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and in this regard the authority granted to the General President and the General Executive Board shall supersede any authority granted herein to the Local Executive Board and any action which may have already been taken under the direction of the Local Union Executive Board.

(c). Prior to a Local Union becoming involved in a strike, boycott, lawsuit or any serious difficulty, such Local Union shall immediately notify the Joint Council of which it is a member of any contemplated action, setting forth the action contemplated and the nature of the difficulty. The Joint Council shall then take steps to approve or disapprove such contemplated action. The Joint Council shall notify the General President of the steps it has taken in respect to such contemplated action. The General President is authorized to approve, disapprove or modify the action of the Joint Council. Approval, disapproval, or modification of the action of the Joint Council or the Local Union by the General President shall not operate to impose any liability on the International Union or its officers or to make them parties to any such action. The International Union does not assume any liability of any nature to any person or persons simply by reason of such approval, disapproval or modification. In taking any action under this Section the International Union is not required and does not undertake to inquire into or pass upon the legality of any strike, work stoppage, or lockout under contracts

Article, with respect to strike votes, shall be satisfied if two-thirds (⅔) of the Local Unions' members covered and voting have voted to strike in accordance with the provisions of this Article, in which event such strike vote shall apply to all the involved Local Unions affiliated with the Conference. Strike votes shall not be required in any case where a collective bargaining agreement then in existence authorizes such strike for the purpose of enforcing the terms of such agreement. Nor shall a strike vote be required for a strike in support of demands that an employer agree to the terms and conditions of an agreement already negotiated on a state, multi-state, multi-area or national, company-wide, or area basis. In such case the Local Union Executive Board, subject to the approval of the General President, may call the strike in support of its position, and may also with the approval of the General President, terminate such strike.

Payment of Benefits

Section 2. The General Executive Board shall have the power to pay out the entire treasury of the International Union to a Local Union that is on strike where the General Executive Board has recognized the strike as one properly subject to the payment of the constitutional benefits provided for herein.

Approval of General Executive Board

Section 3. Any Local Union going out upon strike without prior recognition thereof by the General Executive Board as being a strike properly subject to the payments of out-of-work benefits, under the provisions of this Constitution, may be denied financial benefits from the International Union, provided for by the Constitution, except, however, where less than two hundred (200) employees are involved, the General President

or applicable state, provincial or federal law and assumes no responsibility in this respect.

(d). The Executive Board of a Local Union may, at its discretion, provide that the strike vote mentioned in Section 1 (b) above, be limited to the members employed in a particular division, craft, or place of employment, or under any specific contract. In cases of Area Conferences, the provisions of this

or his authorized representative may approve the strike for the purpose of out-of-work benefits.

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Wage Scales and Approval Thereof

Section 11 (a). Proposed collective bargaining contracts or amendments thereto shall be submitted to the Joint Council and Area Conference if required by the Area Conference By-laws for approval before submission to the employer. If no Joint Council exists it shall be submitted to the State or Area Conference for its approval. In those cases where the proposed contract is for operations which are already subject to an area-wide agreement or a prospective area-wide agreement is already planned, the proposed contract shall be submitted to the Area Conference for approval before submission to the employer.

(b). True copies of final agreements arrived at by any subordinate body shall be filed with the Research Departments of the International Union and the Area Conference within sixty (60) days after consummation.

(c). Approval or disapproval by the International Union, Area Conference or Joint Council of wage scales or other agreements is not intended to

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impose any liability on such organization or its officers; and such organization and its officers do not assume any liability of any nature to any person or persons for such approval or disapproval.

(d). In such instances where the General Executive Board receives information of the proposed execution of a contract which affects the interests of either the members involved or any other members of the International Union by providing working conditions or earnings less than those prevailing in the area, it shall have the power to hold a hearing on such matters and may, by a majority vote, direct the subordinate body to refrain from executing such agreement, and in such circumstances no proposed agreement shall become valid and binding unless specifically approved by the General Executive Board. When such action is contemplated or taken, the employers involved shall be promptly notified of the necessity of specific approval by the General Executive Board before the contract involved may become valid and binding.

The General Executive Board shall also have the power to take such disciplinary action as it deems necessary after proper notice according to this Constitution in those cases where it finds that a subordinate body or its representatives have without good cause executed agreements which adversely affect members of this International Union within the jurisdiction of the particular Joint Council.

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Disputes Over Jurisdiction

Section 12. Where two (2) or more Local Unions are in dispute concerning jurisdiction, there shall be no work stoppage of the involved operation, but such controversy shall be submitted for determination to the Joint Council. If any party to such dispute is aggrieved by the decision of the Joint Council, it may appeal to the General President for the appointment of a special committee which in his discretion he may appoint for the purpose of holding a hearing and making a report and recommendations on the issues raised. The com-

mittee shall make its report and recommendations to the General Executive Board for its decision, which shall be final and binding. The parties shall not be entitled to any further hearing or appearances before the General Executive Board. Pending, and as a condition to, appeal and until such time as the General Executive Board makes it decision, any party taking an appeal under this Section shall comply with the decision of the Joint Council unless the General President or the General Executive Board stays the effectiveness of the decision of the Joint Council pending appeal.

Where two or more Local Unions involved in a dispute concerning jurisdiction are affiliated with different Joint Councils, such controversy shall be submitted for determination directly to the General Executive Board and shall be governed by the same

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provision set forth above with respect to an appeal from the decision of a Joint Council.

Every member of a Local Union, as a condition of becoming and remaining a member, acknowledges the right of the General Executive Board, in resolving a jurisdictional dispute, to transfer him from one Local Union to another.

Any Local Union violating this provision and engaging in any strike or work stoppage or refusing to comply with the decisions so rendered in accordance with this provision, shall be subject to the appointment of a Trustee, revocation of charter, or such other penalty which the General Executive Board may propose.

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ARTICLE XIV

Charter Members and Meetings of Local Unions

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Meetings

Section 2(a). Membership meetings shall be general or special.

(1) General membership meetings shall be held monthly at such place and time as shall be designated by the Local Union Executive Board subject to disapproval by the membership, except where otherwise approved by the General Executive Board. The General Executive Board shall establish such conditions relative to the holding of meetings as in its judgment it deems advisable. Membership meetings may be suspended during any three (3) months between June and October by action of the membership at a meeting after reasonable notice of the intention to vote upon such question.

(2) Members in attendance at membership meetings shall have the right to express

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their views, arguments or opinions upon any business properly before the meeting subject to Local Union Bylaws and the rules and regulations adopted by the Local Union Executive Board pertaining to the conduct of meetings, but no member in exercising such rights shall evade or avoid his responsibility to the organization as an institution or engage in or instigate

any conduct which would interfere with the Local Unions performance of its legal or contractual obligations.

(3) The Local Union Executive Board is authorized to permit membership meetings to be held on a division, craft, place of employment or other similar basis as it shall consider appropriate considering the special needs of the organization so as to permit the membership to attend meetings and to express their views and otherwise exercise their rights as members. There shall be no limitation on the right of any member to be heard at any such separate meetings provided herein on all matters which apply to the general membership, but such member shall be permitted to vote only at such separate division, craft or place of employment meeting to which he has been assigned.

When the Local Union Executive Board authorizes such meetings by division, craft or place of

employment, each such meeting shall be conducted by the officers of the Local Union or by their designees and under the same procedures and rules as a general membership meeting, excepting only special meetings for limited purposes, such as voting on contracts or strikes, handling of grievances, etc.

On all matters which apply to the general membership, the votes of the meeting of each particular division, craft or place of employment shall be totaled to determine the action of the Local Union in such matter.

Members at each separate division, craft or place of employment authorized to hold separate meetings may vote separately on initiation fees, dues, and assessments which may apply to

them alone, if higher than the minimum applicable to the general membership, and may, when authorized by the Local Union Executive Board, vote separately on approval or disapproval of, or on matters arising under, contracts applicable only to them, and strikes or other activities in which only they will participate.

(b). Any local Union failing to comply with this Section during the twelve (12) month period immediately preceding application for benefits, or, in the case of a Local Union chartered for less than twelve (12) months during the period following its chartering, shall not be entitled to any financial or other benefits from the International Union; provided that the General Executive Board may, for good cause shown, waive the requirements of this

Constitution in respect to the paying of financial or other benefits and authorize the paying of same. The General Executive Board may revoke the charter of any Local Union failing to comply with this Section.

ARTICLE XV

JOINT COUNCILS

Formation of Joint Councils

Section 1 (a). Whenever three (3) or more Local Unions are located in one (1) city they shall form a Joint Council, but where there are only a few Local Unions in small cities or towns adjoining or adjacent to large cities, they shall affiliate with the Joint Council in the large cities.

(b). In localities composed of small cities and towns, the General Executive Board shall decide when, where and by whom

Joint Council shall be formed. Should any dispute arise as to the jurisdiction of a Joint Council, it shall be decided by the General Executive Board.

(c). Whenever, in the judgment of the General Executive Board, the jurisdiction of a Joint Council should cover a wider area, the General Executive Board may so order.

(d). Whenever, in the judgment of the General Executive Board, it is not feasible to have Joint

Councils in a state or states, the General Executive Board may establish a State or Multi-State Joint Council with which the Local Unions in the state or states must affiliate.

Whenever the words "Joint Council" appear in other sections of this Constitution, they shall mean Joint Council or State or Multi-State Joint Council.

Representation

Section 2 (a). Each Local Union shall be entitled to seven (7) delegates excluding its Business Agents.

(b). The seven (7) executive officers of each Local Union shall constitute the delegates to the Joint Council. Business Agents shall be entitled to the floor but cannot introduce a motion or vote.

(c). Any delegate to the Joint Council who does not attend at least twenty-five percent (25%) of the regularly scheduled meetings of the Joint Council in any one calendar year, unless excused by a majority of the delegates of the Joint Council present and seated, shall be disqualified as a delegate to the Joint Council for the balance of his term of office in the Local Union.

(d). Any complaint, protest or charge by any delegate concerning the conduct of a Joint Council election shall be made to the General President in writing, by registered or certified mail, within forty-eight (48) hours setting forth the exact nature and

specifications of the complaint, protest or charge and his claim as to how it has affected the outcome of the election. The General President shall decide such complaint, protest or charge. The decision of the General President may be appealed to the General Executive Board from whose decision there shall be no further appeal.

Per Capita Tax

Section 3. Local Unions shall pay to the subordinate bodies with which they are affiliated the monthly per capita tax and assessments which shall be determined by the subordinate bodies in accordance with their Bylaws and such payments shall be made no later than the twentieth (20th) day of the succeeding month.

Judicial Power

Section 4 (a). Joint Councils shall have full power to adjust all questions of jurisdiction between Local Unions, subject to the provisions of Article XII, Section 12, to try cases against Local Unions, cases appealed from Local Unions, appeals by members, and to try individual cases which Local Unions refuse or neglect to try in accordance with the trial procedure provided for in Article XIX.

(b). Should any member violate his obligation by refusing to employ union men, or to patronize and assist members of the International Union, the mem-

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ber who may have been aggrieved shall present his case in writing to the Joint Council, or if there is no Joint Council, then to the General Executive Board and it shall hear and decide the case and report its decision back to each affiliated Local Union.

Joint Council Bylaws

Section 5. A Joint Council may make such Bylaws as it deems proper, provided they do not conflict with the laws of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Such Bylaws and amendments thereto shall be submitted to the General President for approval and shall have no force nor effect until approved by the General President; regardless of approval, if any conflict should arise between such Bylaws or amendments thereto and the International Constitution or amendments thereto, the provisions of the International Constitution shall control. If the General President's office fails to approve the Bylaws the matter may be referred by the Joint Council to the General Executive Board.

Affiliation of Local Unions

Section 6. All Local Unions within the jurisdiction of the Joint Council shall affiliate with the Joint Council, comply with its laws and obey its orders.

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ARTICLE XVI

CONFERENCES

Establishment

Section 1. Experience has demonstrated that State, Multi-State, Multi-Area or National Area Conferences and Trade Divisions are of value to this International Union and its affiliates. Therefore, Conferences and Trade Divisions shall be organized and chartered as subordinate bodies of the International Union for such geographical area, industries or companies as the General Executive Board may from time to time direct. They shall be at all times subject to the unqualified supervision, direction and control of the General President and they shall function under the rules prescribed by the Bylaws approved by the General President. A Policy Committee for the Conferences shall be elected by the delegates to such Conferences in accordance with the applicable provisions of Conference Bylaws. The International Constitution shall supersede Conference Bylaws in the event of conflict.

Each Conference shall submit Bylaws adopted by it to the General President for his approval, and such Bylaws shall not become effective until such approval has been obtained. The General President reserves the right at any time to make such amendments or changes in approved Bylaws as he deems to be in the best interest of the International Union.

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All action establishing Conference dues obligations and assessments shall be submitted to the General President for his approval prior to their becoming effective.

Conference Bylaws

Section 2. All Local Unions and Joint Councils must affiliate with and participate in the activities of the Area Conference and State, Multi-State, Multi-Area or National Conferences, if any, having geographic or awarded jurisdiction over such Local Unions and Joint Councils. All Local Unions must pay all dues and assessments to such Conferences no later than the twentieth (20th) day of the succeeding month.

The functions of State, Multi-State, Multi-Area or National Conferences shall be set forth in their Bylaws which must be approved by the General President. The General President reserves the right at any time to make such amendments or changes in approved Bylaws as he deems in the best interest of the International Union.

International Directors

Section 3. The General President may appoint an International Vice President as International Director for each area to assist him in supervising and directing the activities of such Multi-Area or National, Area or Multi-State Conferences. Upon appointment, the International Directors shall become employees of the International Union, and not offi-

cers of the Conferences, unless elected as such officers pursuant to Section 1 of this Article, and their salaries as International Directors shall be fixed by the General Executive Board. The General President may assume the position of International Director.

Area, Multi-Area or National Company-wide or Industry-wide Contracts

Section 4 (a). If a majority of the affiliated Local Unions vote for area, multi-area or national, company-wide or industry-wide negotiations for an area, national, company-wide or industry-wide contract, all involved affiliated Local Unions shall be bound by such vote, must participate in such area, multi-area or national, company-wide or industry-wide bargaining and shall be bound by the contract approved as provided below. Upon completion of negotiations by a Conference, Trade Division, or by any Committee appointed by the General President, subject to the approval of the General Executive Board, to engage in negotiation of an industry, area, multi-area or national or company-wide contract, such contract shall be submitted to the membership covered by said contract proposal for their approval or rejection.

If a majority of the votes cast by Local Union members voting approve such contract it shall become binding and effective upon all Local Unions involved and their members. Local Unions which

are parties to such contracts may not withdraw from such bargaining unit except upon six (6) months' notice and for good cause shown to the satisfaction of the appropriate Conference, Trade Division or Committee, and approved by the General Executive Board of the International Union. If any Local Union believes that an area, multi-area or national, company-wide or industry-wide contract proposal will deprive its involved members of better existing conditions of general application to all such involved members of the Local Union it may appeal to the General Executive Board which shall have the final authority to determine whether such alleged better general con-

ditions shall be continued or shall yield to the overall gains of the proposed contract. Unless mutually agreed to, no Local Union shall suffer any economic loss.

(b). In the event any Conference, Trade Division or Committee negotiates a contract which involves, affects or relates to operations of the employer or employers within the jurisdiction of other Conferences, Trade Divisions or Committees, notice of intent to execute such contract shall be given to the Conference, Trade Divisions, Committees or Local Unions involved in such other jurisdiction who may within ten (10) days thereafter, protest the application of such contract in their area. Failure to file such protest shall be considered a waiver of any objections to such contract, but shall not be considered an acceptance of such contract as a substitute for, or

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in variance of, existing agreements to which the other Conferences or Local Unions are parties.

In the event of protest, and if the parties cannot adjust the same, the matter shall be submitted to the General Executive Board for its determination, and no such contract shall become finally effective as to such Local Unions as the General Executive Board may determine until the determination by the General Executive Board.

All employers negotiating contracts with Multi-state, Area, Multi-Area or National Conferences, Trade Divisions or Committees established by the General President, subject to approval of the General Executive Board, or with subordinate bodies, shall be provided with a copy of this Article at the time negotiations are started so they will have notice of the approval necessary for a binding contract. All provisions of Article XVI, Section 4 (a) and (b) shall be equally applicable to company-

wide negotiations and contracts on an area, multi-state, multi-area or national basis.

The General President, subject to the approval of the General Executive Board, shall have the authority to appoint negotiating committees and establish procedures for the negotiation of area, multi-area or national, company-wide and industry-wide agreements and for the submission of such negotiated agreements to the membership covered by the proposed contract for approval or rejection, and to do all things necessary to implement the enforce-

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ment of such agreements and compliance by Local Unions with the provisions of this Article and the procedure established thereunder.

Such negotiating committees shall have the authority, with the approval of the General Executive Board, to conduct contract ratification votes and strike votes on such area, multi-area or national, company-wide, industry-wide, or Local Union basis as the committee shall determine, and in the event the strike is authorized, the said committee shall have the authority, with the approval of the General Executive Board, to direct that the strike be conducted on such area, multi-area or national, company-wide, industry-wide, Local or such other selective basis as the committee shall determine; provided, however, that the results of ratification or rejection votes with respect to national agreements shall be determined on a cumulative basis of all votes cast by all affected voting members in all areas, with a cumulative majority vote necessary for acceptance, and a cumulative two-thirds (⅔) vote necessary for rejection of the final offer and strike authorization as provided in this Constitution. The requirement that the employer's final offer of settlement can be rejected only by two-thirds (⅔) vote shall not apply during a strike.

This Article shall be broadly interpreted to carry out the intent and purpose of permitting national negotiations and national agreements in any industry in which the International Brotherhood of Teamsters has jurisdiction.

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Section 5. The General President and the General Secretary-Treasurer may expend any funds of the International Union in payment of any and all expenses and to provide such services of the International Union without limitation deemed by them in their sole discretion to be appropriate to accomplish the negotiation, administration and enforcement of national agreements.

Section 6. The General Executive Board is empowered to amend, delete or add to Article XVI if at any time it believes such action will be in the interest of the International Union or its subordinate bodies.

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ARTICLE XVIII

TRANSFER AND WITHDRAWAL CARDS

Duty to Accept Transfer Card

Section 1. It shall be compulsory upon every Local Union to accept the transfer card of a member in good standing with any Local Union of the International Union, without any extra charge or fees, except as set forth in the International Constitution; provided, however, the member seeking to transfer his already obtained employment within the jurisdiction of the Local Union; provided

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further the member seeking to transfer shall comply with all rules and regulations set forth in this Constitution respecting transfer; and provided further he shall comply with rules and regulations of the Local Union and its Constitution and Bylaws. A member who has transferred to a Local Union shall be entitled to the rights and privileges of membership in the Local Union in accordance with the rules and regulations of the Local Union.

Transfer Card

Section 2. This is to certify that the bearer hereof, Brother ....., whose name is written on the margin of this card in his own handwriting, is a member in good standing of Local Union No. ....., International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and is entitled to all rights and privileges under our jurisdiction.

We recommend him to the friendship and protection of all members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, wherever he may be, and to free admission, provided he has been a member not less than ninety (90) days in the Local Union from which he transfers; otherwise he shall pay the difference in the initiation fee to the Local Union to which he transfers.

This card expires ..... 19..., and is null and void after that date, unless renewed or deposited in accordance with the Constitution.

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The member receiving this card will be suspended from all rights and benefits unless the card is renewed by the Local Union before its expiration. It will also be forfeited unless de-

posited within thirty (30) days after going to work in any town or city where there is Local Union.

This card is issued in accordance with the provisions of Article XVIII, Section 1 and Section 3 of the International Constitution.

Given under our hands and the seal of the Local Union No. ....., this ..... day of ....., 19 .....

(SEAL)

* * * * * * *

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ARTICLE XXII

LOCAL UNIONS

Bylaws

Section 1. Each Local Union shall adopt such Bylaws as it may deem advisable, providing they do not conflict with the laws of the International Union. Where the General President fails to approve the Bylaws the Local Union may refer the matter to the General Executive Board.

Officers

Section 2. The officers of the Local Union shall consist of a President, Vice President, Recording Secretary, Secretary-Treasurer and three (3) Trustees. These officers shall constitute the Executive Board of the organization. The meetings of the General Executive Board, Conference Policy Committees and the Executive Boards of Local Unions and all other subordinate

bodies shall be open only to those persons who have been specifically permitted to attend by such Boards or Committees.

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C. **Plaintiff's Exhibit 202**

National Master

Freight Agreement

and

Southern Conference

Area

Over-the-Road

Supplemental Agreement

For the Period of

April 1, 1970

through

June 30, 1973

NATIONAL MASTER FREIGHT AGREEMENT
COVERING OVER-THE-ROAD AND LOCAL
CARTAGE EMPLOYEES OF PRIVATE
COMMON, CONTRACT AND LOCAL
CARTAGE CARRIERS

for the period of

April 1, 1970 through June 30, 1973
covering:

operations in, between and over all of the states, territories and possessions of the United States, and operations into and out of all contiguous territory.

The .....
(Company or Association)
hereinafter referred to as the "Employer,"

and

the National Over-the-Road and City Cartage Policy and Negotiating Committee and Local Union No. ....., affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the "Union," agree to be bound by the terms and conditions of this Agreement.

ARTICLE 1.

Parties to the Agreement

Section 1.

Employers Covered

The Employer consists of Associations, members of Associations who have given their authorization to the Associations to

represent them in the negotiation and/or execution of this Agreement and Supplemental Agreements, and individual Employers who become signatory to this Agreement and Supplemental Agreements as hereinafter set forth. The signatory Associations enter into this Agreement and Supplemental Agreements as hereinafter set forth. The signatory Associations enter into this Agreement and Supplemental Agreement on behalf of their members under and as limited by their authorizations.

Section 2.

Unions Covered

The union consists of any Local Union which may become a party to this Agreement and any Supplemental Agreement as hereinafter set forth. Such Local Unions are hereinafter designated as "Local Union." In addition to such Local Unions, the National Over-the-Road and City Cartage Policy and Negotiating Committee of the IBT, hereinafter referred to as "Union" or the "National Union Committee," is also a party to this Agreement and the agreements supplemental hereto.

Section 3

Transfer of Company Title or Interest

This Agreement and the Supplemental Agreements hereto, hereinafter referred to collectively as "Agreement," shall be binding upon the parties hereto, their successors, administrators, executors and assigns. In the event an entire operation, or rights only, are sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership or bankruptcy proceedings, such operation or use of such rights shall continue to be subject to the terms and conditions of this Agreement for the life thereof.

On the sale, transfer or lease of an individual run or runs, or rights only, the specific provisions of this Agreement, excluding riders or other conditions, shall prevail. It is understood by this Section that the parties hereto shall not use any leasing device to a third party to evade this Agreement. The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, lessee, assignee, etc., of the operation covered by this Agreement or any part thereof, including rights only. Such notice shall be in writing with a copy to the Local Union, at the time the seller, transferor, or lessor executes a contract or transaction as herein described. The Local

Union shall also be advised of the exact nature of the transaction, not including financial details. In the event the Employer fails to require the purchaser, transferee, or lessee to assume the obligations of this Agreement, the Employer (including partners thereof) shall be liable to the Local Union and to the employees covered for all damages sustained as a result of such failure to require assumption of the terms of this Agreement, but shall not be liable after the purchaser, the transferee or lessee has agreed to assume the obligations of this Agreement.

When a signator to this Agreement purchases rights from another signator, the purchaser must accept the affected employees of the seller in accordance with the provisions of Article 5, Section 3, before hiring any new employees. The applicable lay-off provisions of this Agreement shall apply. When rights are sold to a non-signator to this Agreement, and such purchaser is the sole bidder, the provisions of this Agreement shall not apply. However, in the event of multiple bids, one or more of such bidders being signator to this Agreement, and the seller elects to sell to a non-signator, then

all of the provisions of Article 1, Section 3, shall apply.

ARTICLE 2

Scope of Agreement

Section 1

Master Agreement

The execution of this Master Agreement on the part of the Employer shall cover all operations of the Employer which are covered by this Agreement, and shall have application to the work performed within the classifications defined and set forth in the Agreements supplemental hereto.

Section 2

Supplements to Master Agreement

There are several segments of the Trucking Industry covered by this Agreement and for this reason Supplemental Agreements are provided for each of the specific types of work performed by the various classifications of employees controlled by this Master Agreement.

All such Supplemental Agreements are subject to and controlled by the terms of this Master Agreement and are sometimes referred to herein as "Supplemental Agreements."

All such Supplemental Agreements are to be clearly limited to the specific classifications of work as enumerated or described in each individual Supplement.

Section 2

Non-Covered Units

This Agreement shall not be applicable to those operations of the Employer where the employees are covered by a collective bargaining agreement with a Union not signatory to this Agreement, or to those employees who have not designated a signatory Union as their collective bargaining agent.

When a majority of the eligible employees performing work covered by an Agreement designated by the National Negotiating Committee to be Supplemental to the National Master Freight Agreement (to which their Employer is a prior signator), execute a card authorizing a signatory Local Union to represent them as their collective bargaining agent at the terminal location, then, such employees shall automatically be covered by this Agreement and the applicable Supplemental Agreements. In such cases the parties may by mutual agreement negotiate wages and conditions, subject to Conference Joint Area Committee approval.

The provisions of this Agreement shall apply to all accretions to the bargaining unit, including but not limited to, newly established or acquired terminals, and consolidations of terminals.

Section 4.

Single Bargaining Unit

The employees, unions, employers and associations covered under this Master Agreement and the various Supplements thereto shall constitute one bargaining unit. It is understood that the printing of this Master Agreement and the aforesaid Supplements in separate Agreements is for convenience only

and is not intended to create separate bargaining units. This National Master Agreement applies to city and road operations, and other classifications of employment authorized by the signatory employers to be represented by Trucking Employers, Inc. and by other employers and Associations participating in national collective bargaining. The common problems and interests, with respect to basic terms and conditions of employment, have resulted in the creation of the National Master Freight Agreement and the respective Supplemental Agreements. Accordingly, the Associations and employers, parties to this Agreement, acknowledge that they constitute a single National multi-employer collective bargaining unit, composed of the associations named hereinafter and those employers authorizing such associations to represent them for the purpose of collective bargaining, and solely to the extent of such authorization, and such other.

individual employers which have, or may, become parties to this Agreement.

Section 5.

Riders

Riders or Supplements to this Agreement providing for better wages, hours and working conditions, which have previously been negotiated by Local Unions and Employers affected and put into effect, shall be continued. No new Riders or Supplements to this Agreement shall be negotiated unless approved by the Conference Joint Area Committee, if confined to that Conference Area, or by a Joint Multi-Conference Area Committee, if applicable to more than one Conference Area.

Riders to this Agreement and to Supplements thereto between Local Unions and Employers that do not meet the standards set forth in the National Master Agreement and Supplements thereto, shall be continued pending negotiations for amendment of such riders, which negotiations shall be conducted and concluded within 90 days after June 1, 1970. In the event no agreement is concluded, the matter shall be referred during such period to the Conference Joint Area Committee for final disposition. If the Conference Joint Area Committee cannot finally dispose of

the matter, such riders shall be null and void. However, wage and monetary matters negotiated in this Agreement shall become effective April 1, 1970.

ARTICLE 3.

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Section 2

Probationary and Casual Employees

A new employee shall work under the provisions of this Agreement but shall be employed only on a thirty-day trial basis, during which period he may be discharged without further recourse; provided, however, that the Employer may not discharge or discipline for the purpose of evad-

ing this Agreement or discriminating against Union members. After thirty days the employee shall be placed on the regular seniority list.

In case of discipline within the thirty-day period, the Employer shall notify the Local Union in writing. Any employee hired as a seasonal, casual, or part-time worker shall not become a seniority employee under these provisions where it has been agreed by Employer and Union that he was hired for seasonal, casual, or part-time work. The word "seasonal," as used herein, is meant to cover situations such as the "Christmas period" in parcel delivery operations and the like. The words "casual or part-time" as used herein are meant to cover situations such as replacements for absenteeism and vacations. Casual and part-time employees shall be given first opportunity to qualify as regular employees and be placed at the bottom of the seniority board if they meet all qualifications required of new applicants for regular employment, and shall accumulate seniority from the date of regular employment.

If employees are hired through an employment agency, the Employer is to pay the employment agency fee.

However, if the Local Union was given equal opportunity to furnish employees under Article 3, Section (1) (c), and if the employee is retained through the probationary period, the fee need not be paid until the 31st day of employment.

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Section 5

The term "Local Union" as used herein refers to the I.B.T. Local Union which represents the employees of the particular employer for the purpose of collective bargaining at the particular place or places of business to which this Agreement and the Supplements thereto are applicable, unless, by agreement

of the Local Unions involved, or a Change of Operations Committee, jurisdiction over such

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employees, or any number of them, has been transferred to some other Local Union, in which case the term Local Union as used herein shall refer to such other Local Unions.

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ARTICLE 5

Section 1

Seniority Rights

Seniority rights for employees shall prevail under this Agreement and all Agreements supplemental hereto. Seniority shall only be broken by discharge, voluntary quit, more than a three (3) year lay-off, or for such greater period than three (3) years as a change of operations committee may direct during the third year as provided in Article 8(e) herein, or as provided in any applicable provisions of the Supplemental Agreements. The extent to which seniority shall be applied as well as the methods and procedures of such application shall be clearly set forth in each of the Supplemental Agreements.

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Section 3

(a) In the event that the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees

absorbed or affected thereby shall be determined by mutual agreement between the Employer and the Unions involved.

In the application of this provision the following general rules shall apply:

Merger, purchase, acquisition, sale, etc.

(1) If all companies involved in the merger, etc., are solvent at the time of such transaction, the active seniority roster (excluding those employees on letter of layoff) of employees involved in the merger of terminals or operations are to be "dovetailed" by appropriate classification (i.e., road, city), in the order of the last date of Company employed in

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such classification. In addition the inactive seniority rosters (employees who are on letter of layoff) shall be similarly "dovetailed" by appropriate classification. The active merged seniority roster shall be utilized first to provide employment at the merged terminal or operation. If and when additional employees are required at the merged facility, they shall be recalled from the merged inactive roster and after recall such employees shall be "dovetailed" into the active roster with their full seniority. Seniority rosters previously combining job classifications shall be continued unless agreed otherwise.

In the application of this rule, it is immaterial whether the transaction is called a merger, purchase, acquisition, sale, etc. It is also immaterial whether the transaction involves merely the purchase of stock of one corporation by another, with two separate corporations continuing in existence, and

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it is immaterial whether separate terminals of the Companies are physically merged or not, subject, however, to rules 4, 5, and 6 below.

(2) If, in the type of transaction described above, one of the Companies is insolvent at the time of the transaction, then the employees of the insolvent Company will go to the bottom of the Master Seniority List. The test of whether a Company is solvent or insolvent is governed entirely by whether bankruptcy, receivership, composition for the benefit of creditors, reorganization, or similar proceedings are pending in the state or federal court. If such proceedings are pending, the Company is considered insolvent for the purpose of this rule.

(3) If the transaction involved constitutes merely a purchase of permits or rights by one Carrier from another Carrier, without the purchase or acquisition of equipment or terminals, the

employees of the Company selling the permits shall have no seniority rights at all, but shall be offered opportunity for employment at the bottom of the seniority list of the Company purchasing the permits. If such employees are hired they shall be given seniority credit for fringe benefits only.

(4) If the merger, purchase, acquisition, sale, etc. involves two Companies which do not have parallel operating rights that separate seniority lists will be maintained for the separate non-parallel operations. However, there will be one master seniority list for the purpose of fringe benefits, etc., and for the protection of employees laid off on one seniority board when work opportunities are available on the other seniority board and all eligible employees on such other seniority board are employed.

(5) Where the transaction involves both parallel and non-

parallel rights then rules 1 and 2 above will apply to the parallel rights, and rule 4 will apply to non-parallel rights.

(6) Where only temporary authority is granted in connection with any of the transactions described above, then separate seniority lists shall continue only when terminals or operations are not merged, unless otherwise agreed. The Company which is to survive will assume the obligations of both collective bargaining agreements during the period of the temporary authority.

(7) If in connection with the transactions described in these rules the successor Company determines to discontinue the use of a Local Cartage Company, the employees of that Local Cartage Company who have worked exclusively on the pick-up and delivery service which is retained by the successor Company shall be given opportunity to continue to perform such serv-

ice as an employee of such successor Company, and shall have their seniority "dovetailed" as described in the above rules.

(8) Area and/or State Committees created pursuant to Local Supplements which have previously established rules of seniority, not contrary to the provisions of such Supplements, and approved by the Joint Area Committe, may continue to apply such rules if such rules are reduced to writing.

(b) If the minimum wage, hour and working conditions in the company absorbed differ from those minimums

set forth in this Agreement and Supplements thereto, the higher of the two shall remain in effect for the men so absorbed.

Section 4

The Union reserves the right to cut the road seniority board when the average weekly earnings fall to $150.00 or less. This is not to be construed as imposing a limitation on earnings. After the Union notifies the Employer verbally to cut the board and the Employer refuses to do so, the Union shall immediately

submit its request again in writing to the Employer. If the Employer still refuses to cut the board after receiving the wrtten request, then his refusal to do so shall be considered a grievance to be handled in accordance with the grievance procedure set forth in this Agreement. After the Joint State Committee or the Joint Area Committee renders a decision favorable to the Union, if the Employer still refuses to cut the board then in such case the Union shall have the right to strike notwithstanding any provisions in this Agreement to the contrary, and the Employer shall be obligated to pay all employees under this Agreement for all time lost.

In determining whether average weekly earings will fall to $150.00 or less, only the earnings of the lower twenty-five per cent (25%) of the drivers on the seniority board, counting from the bottom up, shall be considered. The average shall be calculated for the thirty (30) day period preceding the union's original request. After such calculation is made, the average earnings of the drivers for the top seventy-five per cent (75%) of the seniority board must also average more than $150.00 per week, or layoff shall be made in

accordance with seniority. The above provisions shall also apply to extra board for sleeper drivers exclusively.

Section 5

New Branches, etc.

(a) Opening of new branches, terminals, divisions or operations.

(1) When a new branch, terminal, division or operation is opened (except as a replacement for existing operations or as a new division in a locality where there are existing operations), the Employer shall offer the opportunity to transfer to regular positions in the new branch, terminal, division, or operation in the order of their company or classification seniority, to employees in those branches, terminals, divisions or operations which are affected in whole or in part by the opening of the new branch, terminal, division or operation. This provision is not intended to cover situations where there is replacement of an existing operation or where a new division is opened in a locality where there is an existing terminal. In these

latter situations, laid-off or extra employees in the existing facilities shall have first opportunity for employment at the new operation in accordance with their seniority. If all regular full-time positions are not filled in this manner, then the provisions of the above paragraph shall apply.

(2) The transferred employees, other than those referred to in the exception to Section 5(a) (1) above shall, for a period of 30 days following the transfer, have an unqualified right to return to their old branch, terminal, division or operation if it is still in existence and carry with them

their seniority at that old branch, terminal, division or operation. Employees who avail themselves of the transfer privileges because they are on lay-off at their original terminal may exercise their seniority rights if work becomes available at the original terminal during the three year lay-off period al-

lowed them at their original terminal.

Transferred employees shall have, after 30 days, the same privileges with respect to subsequent transfers as set forth in Paragraph 1 above.

Closing of Branches, etc.

(b) Closing of branches, terminals, divisions or operations.

(1) When a branch, terminal, division or operation is closed and the work of the branch, terminal, division or operation is eliminated, an employee who was formerly employed at another branch, terminal, division or operation shall have the right to transfer back to such former branch, terminal, division or operation and exercise his seniority based on the date of hire at the branch, terminal, division or operation into which he is transferring provided he has not been away from such original terminal for more than three years.

(2) When a branch, terminal, division or operation is closed or partially closed and the

work of the branch, terminal, division or operation is transferred to another branch, terminal, division or operation in whole or in part, employees at the closed or partially closed down branch terminal, division or operation shall have the right to transfer to the branch, terminal, division or operation into which the work was transferred prior to the recall of laid off employees at that location. Such employees transferring as a result of an approved change of operations, shall be dovetailed with their full classification seniority (city or road) into the active seniority roster at the point of redomicile, excluding those employees on letter of layoff. If and when additional employees are required at the point of domicile, employees on layoff status at that location shall be recalled. When recalled, such laid off employees shall be dovetailed with their full seniority.

(c) When a branch, terminal, division or operation is closed

and the work of the branch, terminal, division or operation is eliminated, employees who are laid off thereby shall be given first opportunity for available regular employment at any other branch, terminal, division or operation of the Employer within the Area of the Supplemental Agreement under which employed. The obligation to offer such employment shall continue for a period of three years from the date of closing. However, the Employer shall not be required to make more than one offer during this period. Any employee accepting such offer shall pay his own moving expenses. If hired, he shall go to the bottom of the seniority board but shall have company seniority for fringe benefits only.

Qualifications

(d) In all transfers referred to in Section 5(a), (b) and (c) above the employee must be qualified to perform the job by experience in the classification.

Section 6.

The Union shall be entitled to a seniority list each six months upon request. The Employer shall post a seniority list at least once every twelve (12) months. Employees shall make written complaint to the Company and Union within 30 days after such posting. Any such complaint not settled between the Company and Union shall be submitted to the grievance procedure.

Section 7.

The parties acknowledge that the above rules are intended solely as general standards and further that many factual situations are presented to Committees which necessitate modification or amendment. Accordingly, the Employers and Unions acknowledge that questions of accrual, interpretation or application of seniority rights may arise which are not covered by the general rules set forth. Accordingly, it is understood that the Employers and Unions jointly involved, and/or the respective grievance committees may mutally agree to such disposition of questions of seniority which in their judgment is appropriate under the circumstances. The Change of Operations Committee provided in the National Master Freight Agreement or the Supplemental Agreements shall have the authority to de-

termine the establishment and application of seniority in those situations presented to them. In all cases the seniority decisions of the Joint Committees including the Change of Operations Committees and Subcommittees, established by the National Master Freight Agreement and the respective Supplemental Agreements shall be final and binding.

ARTICLE 6.

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Section 2.

Extra Contract Agreements

The Employer agrees not to enter into any agreement or contract with his employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void.

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ARTICLE 8.

National Grievance Procedure

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(e) **Change of Operations.** Present terminals, breaking points or domiciles shall not be transferred or changed without the approval of an appropriate change of operations committee. Such committee shall be appointed in each of the Conference Areas, equally composed of employer and union representatives. The change of operations committee shall have the authority to determine the seniority of the em-

ployees affected and such determination shall be final and binding.

This committee shall also have jurisdiction over the closing of terminals in regard to seniority. This shall not apply within a 25-mile radius. In considering any change of operations, this committee shall have the power to extend the three (3) year lay-off period contained in Article 5, Section 1, or in applicable Supplemental Agreements, in the event it appears toward the end of such period that the circumstances warrant.

The Committee shall observe the Employer's right to designate home domiciles and the operational requirements of the business. However, individual employees shall not be required to redomicile more than once during the term of the contract, unless a merger, purchase, sale, acquisition, or consolation of employers is involved, or unless the change of operations committee rules to the contrary, based on the facts presented.

The National Grievance Committee shall adopt Rules of Pro-

cedure concerning the application and administration of this Article.

Where any employee is required, through no fault of his own, to change residence in order to follow employment as a result of an approved change of operations, the Employer shall move the employee and assume the responsibility for proven loss of, or damage to, household goods due to such move, or pay his moving expenses, including insurance against loss or damage. The Employer shall provide packing materials for the employee's household goods. This shall not apply to moves within the 75-mile radius as defined in the peddle run provision except where by past practice and agreement, a greater or lesser radius has been agreed to.

The Employer shall pay reasonable expenses to demount and remount an employee's mobile home, if used as a residence, and, in such instance, shall pay an amount for the movement of household goods, not to exceed that which would otherwise be provided in the paragraph immediately above.

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ARTICLE 28.

Sympathetic Action

In the event of a labor dispute between any Employer, party to this Agreement, and any International Brotherhood of Teamsters' Union, parties to this or any other International Brotherhood of Teamsters' Agreement, during the course of which dispute such Union engages in lawful economic activities which are not in violation of this or such other Agreement, then any other affiliate of the International Brotherhood of Teamsters, having an Agreement with such Employer shall have the right to engage in lawful economic activity against such Employer in support of the above first mentioned Union notwithstanding anything to the contrary in this Agreement or the International Brotherhood of Teamsters' Agreement between such Employer and such other affiliate.

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ARTICLE 31.

Multi-Employer, Multi-Union Unit

The parties agree to become a part of the multi-employer, multi-union bargaining unit established by this National Master Agreement, and to be bound by the interpretations and enforce-

ment of this National Master Agreement and Supplements thereto.

The parties further agree to participate in joint negotiations of any modification or renewal of this National Master Agreement and Supplements thereto and to remain a part of the multi-employer, multi-union bargaining unit set forth in such renewed Agreement and Supplements.

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ARTICLE 38.

Non-Discrimination

The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin.

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Negotiating Committee

For the Employees:

National Over-the-Road and City Cartage Policy and Negotiating Committee

Frank E. Fitzsimmons
(Chairman)

Murray W. Miller
Joseph Trerotola
Elvin E. Hughes
Weldon L. Mathis

William Presser
William McCarthy
Roy L. Williams
M. Ralph Dixon
Robert Flynn
A. J. Hardy
Verne Milton
Joseph W. Morgan
Walter Shea
B. M. Waggoner
Al Weiss

For the Employers:
Trucking Employers, Inc.

R. F. Beagle
(Chairman)

Arthur Imperatore
Vincent R. Dagen
Donald E. Cantlay
R. S. McIlvennan
M. M. Gordon
Rudy Pulliam
John A. Murphy
Robert F. Todd

In Behalf of the Following Associations:

Arizona Motor Truck League, Inc.
California Trucking Association
Carolina Transportation Association, Inc.
Carriers Council of New Hampshire, Inc.
Carriers Employers Association of Maine

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Central Motor Freight Association, Inc.
Central Pennsylvania Motor Carriers Conference, Inc.
Employers Group of Motor Freight Carriers, Inc.
Greater Newark Trucking Association
Indiana Motor Carriers Labor Relations Association, Inc.
Intermountain Operators League
Iowa Operators Association
Kentucky Motor Carriers Labor Advisory Council
Middlesex Motor Freight Carriers Association

Minnesota Motor Transportation Employers Association
Missouri-Kansas Motor Carriers Conference, Inc.
Motor Carriers Association of North Jersey
Motor Carriers Employers' Association
Motor Carriers Labor Advisory Council
Motor Carriers of Virginia, Inc.
Motor Transport Labor Relations, Inc.
New England Motor Carriers Council, Inc.
New York State Employers' Association, Inc.
New York State Motor Truck Association, Inc.
Ohio Motor Carriers Labor Relations Association
Southeastern Area Motor Carriers Labor Relations Association
Southwest Operators Association

Tri-Area Labor Association
Tri-City Common Carriers Trucking Association
Truck Operators' League of Montana, Inc.
Truck Operators League of Oregon
Trucking Employers Labor Council of Maryland-District of Columbia
Vermont Truck Owners
Washington Trucking Associations, Inc.
Western Empire Operators Association
Western Pennsylvania Motor Carriers Association, Inc.

Other Associations and Employers

California Labor Consultants, Inc.
  Clyde W. Yandell, President
Cartage Employers' Management Association
  Charles E. Hughes, Secretary
Cartage Men's Association of Greater Kansas City, Inc.
  Donald J. Quinn

Highway Carriers Association of California
  R. Sparks
Irregular Route Carriers
  Daniel A. Darling, President
  Robert A. Sullivan, Counsel
Labor Associates
  Monte Perkins
  William L. Waskom

Master Truckmen of America, Inc.
  Sam Berger, Executive Director
Michigan Cartagemen's Association
  Joseph J. Sciturro, President
  Howerd McDougal, Executive Secretary
Motor Carrier Labor Advisory Council
  John Bridge
  Frank G. Bridge
National Perishable Commodities Conference
  Robert A. Sullivan, Counsel
National Steel Carriers Association
  George Gregory Mantho, Managing Director and Labor Counsel
Northern Ohio Motor Truck Association, Inc.
  Richard W. Schulz, President
Perishable Commodity Carriers Association, Inc.
  George Gregory Mantho, Managing Director and Labor Counsel
Seamon and Sparks and Associates
  R. Sparks
Highway Carriers Association
United Trucking Employers, Inc.
  Stanley W. Skaag, Executive Vice President
Signal Delivery Service, Inc.
  John H. King, Vice President

SOUTHERN CONFERENCE AREA
OVER-THE-ROAD MOTOR FREIGHT

SUPPLEMENTAL AGREEMENT

Covering Drivers Employed by
Private, Common and Contract Carriers

For the Period of:
April 1, 1970 to June 30, 1973

In the Territory of:
Alabama, Florida, Georgia, Mississippi, Tennessee,
Arkansas, Louisiana, Oklahoma and Texas

PREAMBLE

To cover the drivers employed in the operations of Common, Contract, and Private Carriers in the Southern Conference Area comprised of the following States: Alabama, Florida, Georgia, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma and Texas and any other cities where the Local Unions have drivers employed by the Employers in the above named States:

The ....., hereinafter re-
(Company or Association)
ferred to as the Employer, and the Southern Conference of Teamsters, and Local Union No. ..., affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Union, agree to be bound by the terms and provisions of this

Agreement. This Over-the-Road Supplement is supplemental to and becomes a part of the National Master Freight Agreement hereinafter referred to as the National Agreement for the period commencing April 1, 1970, and shall prevail over the specific terms of that Agreement only to the extent specifically provided herein.

ARTICLE 40

Scope of Agreement

Section 1

The execution of this Supplemental Agreement, herein referred to as "Agreement," on the part of the Employer shall cover all over-the-road operations of the Employer in said described area.

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Section 3

City or Local Work

Local dock work or city pickup and delivery service is not subject to the terms and conditions of this Agreement, but is subject to a separate Agreement entered into between the Employer and the involved Local Union. Employees subject to this Agreement shall not be permitted to perform dock work or city pickup

and delivery service where the performance of such work conflicts with the Local City Pickup and Delivery Agreement between the Employer and a Local Union affiliated with the I.B.T.C.W. & H. of A. and except as specifically permitted herein.

Section 4

Pickup and Delivery Limitations

The operations, other than those of a certificated irregular carrier, shall be dock to dock and there shall be no pickups or deliveries permitted at either end of the run except that one pickup of a solid load at point of origin and one delivery of a solid load at destination shall be allowed, provided that the driver receives the applicable hourly rate of pay for time lost through delivery. **Pickup or delivery of a trailer at an interline terminal, if located on general route, shall be allowed.**

Section 5

Neither pickup at origin nor delivery at destination shall be permitted where a driver or drivers, or driver and helper have driven **four hundred** (400) miles, or on any run which cannot be completed in ten (10) consecutive hours from point of origin to final destination, including such pickup and delivery.

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Section 7

Riders

Riders or Supplements to the Agreement providing for better wages, hours, and working conditions, which have previously been negotiated by Local Unions and Employers affected and put into effect, shall be continued. No new Riders or Supplements to this Agreement shall be negotiated by any of the parties hereto except in those instances agreed to by the Southern Conference Area Grievance Committee.

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ARTICLE 42

SENIORITY

Section 1

Seniority rights for employees shall prevail. Seniority shall be broken only by discharge, voluntary quit, or more than a three (3) year layoff. In the event of a layoff, an employee so laid off shall be given two (2) weeks notice of recall by certified mail to his last known home address. In the event the employee fails to make himself available for work at

the end of said two (2) weeks, he shall lose all seniority rights under this Agreement. Employees shall give the Employer one (1) week notice of intent to return to work. A list of employees arranged in the order of their seniority shall be posted in a conspicuous place at their place of employment.

Any protest to the seniority list must be made in writing, with a copy to the Employer and the Union, within thirty (30) days from the date of posting of the seniority list. In the event no protest is made the seniority list, as posted, shall be considered correct and final.

Controversies regarding seniority shall be settled by the Employer and the Union. Failing a settlement by these parties, the controversy shall be processed under the Grievance Procedure set out in Articles 43 and 44 of this Agreement.

Section 2

(a) Terminal seniority as measured by length of service at such terminal shall prevail except in those instances

where a majority of the employees of an Employer in the Southern Conference Area agree by vote to the contrary.

(b) Within sixty (60) days after the date of the signing of this Agreement any request of any employee of an Employer for seniority other than terminal seniority shall be made to the Local Union involved, and if such request is made during this period all Local Unions involved shall be notified and a vote shall be taken of all employees involved within one hundred twenty (120) days of the date of the signing of this Agreement and a majority vote shall be final and binding. After these time limits no further change from terminal seniority will be made during the life of this Agreement, except as otherwise provided for in this Agreement.

(c) **For employees of certain Employers who have operations in both the former Southeast and Southwest Areas, who now have modified and/or terminal seniority, notwithstanding (a) and (b) above, within one hundred and twenty (120) days after the date of the signing of this Agreement, a vote will be taken of all such employees to determine whether terminal or modified system seniority shall apply**

to these employees in the Southern Conference Area and a majority vote shall be final and binding.

(d) Where there is presently in effect a type of seniority other than terminal or modified system, within sixty (60) days after the date of the signing of this Agreement any request of any employees of an Employer for terminal or modified system shall be made to the Local Union involved, and if such request is made during this period all Local Unions involved shall be notified and a vote shall be taken of all employees involved within one hundred twenty (120) days after the date of the signing of this Agreement, and a majority vote shall be final and binding. After these time limitations no further change from present seniority will be made during the life of this Agreement, except as otherwise provided for in this Agreement.

Section 3

Reduction in Force

When it becomes necessary to reduce the working force, the last employee hired shall be laid off first and when the force is again increased, the employees are to be returned to work

in the reverse order in which they were laid off.

Section 4

Vacancies and New Runs

(a) Vacancies, new runs and new positions, are subject to the seniority and shall be posted for bid, except as hereinafter provided. The employee with the highest seniority who bids shall receive such vacancy, new run, or new position. The posting shall be at a conspicuous place so that all eligible employees will receive notice of the vacancy, run or position open for bid. Bids shall remain open for a period of seven (7) days, and runs shall be awarded within seven (7) days thereafter. Seniority shall not govern assignment of equipment.

(b) The bulletining of regular runs shall include the days and approximate time of departure, destination, the routes,

type of run and number of days each week (approximate time of departure will not apply at agreed to relay points).

If there is no load for the bid driver at his approximate departure time, the driver will be called at least two (2) hours prior to his approximate depar-

ture time and either cancelled or delayed subject to call. If cancelled, the driver will be placed on the extra board with his seniority. If delayed, he will be guaranteed his bid run during his bid day.

All runs shall be posted for bid at least once each twelve (12) months, including peddle runs. Minimum guarantee runs (those paid on hourly basis) shall not be posted for bid, but will be run off the extra board in accordance with their seniority as provided by this Agreement. The number of regular runs to be posted for bid shall be determined by taking 75% of the number of runs operating between two (2) designated points, for a period of six (6) months.

(c) Extra employees at an away from home terminal shall be dispatched back to their home terminal in the same order as dispatched from home terminal and may be dispatched ahead of regular employees, provided such dispatch does not result in cancellation of regular runs back to the home terminal. An extra employee at a point away from

home terminal shall be entitled to the first extra trip to his home terminal.

At Point of First Destination

If no load is available to extra employee's home terminal he may be dispatched to another point after all domiciled employees are dispatched.

At Point of Second Destination

If no load is available to extra employee's home terminal he may not be forced to go to any point away from his home terminal, but may be dispatched to any point if from such third destination point he will be dispatched to his home terminal in one tour of duty.

Either a regular or extra employee may be dispatched on VIA dispatch without regard to extra employees at VIA terminals. Extra employees may be dispatched VIA his home terminal if that dispatch does not violate the above paragraph and does not cancel a regular employee at that terminal. **The Employer and the Local Union may establish dispatch rules, these rules will be in writing and signed by both parties. These dispatch rules must be submitted for approval to the appropriate Grievance Committee within ninety (90) days from the date of the signing of this Agreement. Failure of either party to agree to establish dispatch rules the fol-**

lowing shall apply: Extra employees upon arrival at the home terminal may pick or choose his next destination and hold for same in his seniority order as long as there are drivers available to perform the work.

In the event the dispatch of an extra employee is changed enroute he shall be paid the applicable rate for the type of run he actually performed, subject to the eight (8) hour guarantee.

In using the terms "broken" or "changed" dispatch enroute

it is meant that this is done at a terminal or stop between points of origin and destination. Any dispatch given at point of destination is a second run and shall be paid as such in accordance with the provisions set forth in this Agreement.

Wreck of equipment or incapacity of employee, or if dispatch is not completed because of a strike of a Teamsters' Union, shall not be considered a broken dispatch.

An employee is not eligible for dispatch until his elapsed time in a terminal is equal to the minimum running time plus a statutory rest period. For example: An employee dispatched at 12:00 noon from his home terminal on a run that requires eight

(8) hours running time will not be eligible for dispatch at the foreign terminal until sixteen (16) hours past the 12:00 noon original dispatch, or 4:00 a.m. the following morning.

The bid and/or dispatch day shall be the calendar day, midnight to midnight, unless otherwise mutually agreed to by the Local Union and Employer involved. Should there be a dispute as to the mutual agreement of the bid and/or calendar day between the Employer and the Local Union that dispute shall be subject to the grievance procedure. Such agreement must be in writing and signed by both parties with a copy filed with the proper Grievance Committee as provided for in this Agreement. The Local Union and Employer shall arrive at an agreement on the minimum running time and shall file said agreement with the Grievance Committee.

(d) A regular employee at an away-from-home terminal shall be dispatched out in the same order as was dispatched from home terminal. A regular run may be cancelled at the home terminal in order to get an extra employee back to his home ter-

minal for a weekend or holiday, or at any time with empty equipment. If the dispatch of a regular employee is broken, he will be paid his original dispatch, plus miles driven off route and work performed off route.

A road employee may be required to drop a trailer at an interline terminal at point of destination of his run when the terminal of his own Employer is closed.

Section 5

Time Off

The Employer shall provide in his dispatch rules and/or procedure suitable provisions relating to time off at the home terminal provided there is no delay in the movement of freight.

Section 6

Use of Lease Equipment

Certificated or permitted carriers shall use their own available equipment together with all leased equipment under a minimum thirty (30) day bona fide lease arrangement with owner-operators on a rotating board, before hiring any extra equipment.

Section 7

Extra Contract Agreements

(a) The Employer agrees not to enter into any other agreement or contract with his employees, individually or collectively, which in any way conflicts with the

terms and provisions of this Agreement.

Company Rules

(b) The Employer is permitted to make and enforce any reasonable Company rules which do not conflict with the provisions of this Agreement; all such rules to be posted for a period of six (6) days before becoming effective.

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ARTICLE 51.

Mileage and Hourly Rates

Section 1.

(a) The mileage rates per mile shall be as follows:

	4-1-70	7-1-71	7-1-72
Single Axle Units .	12.925	13.925	14.675
Tandem Axle Units	13.175	14.175	14.925
Tandem 5-Axle Units	13.300	14.300	15.050
Double Bottom Units, Jeeps, or a combination of vehicles or units not to exceed two trailers	14.325	15.325	16.075
Two-Man Rate ...	15.085	16.085	16.835
Single-Man Rate ..	7.5425	8.0425	8.4175
Double Bottoms Not exceeding two 30′ Trailers Two-Man Rate .	15.835	16.835	17.585

Single-Man Rate .	7.9175	8.4175	8.7925

(b) Drivers dispatched with double bottom (not including two forty-foot trailers) shall receive double bottom rate to final destination, even though a box or boxes are dropped enroute. Drivers starting out with single operation but becoming a double operation enroute shall receive a double operation rate to destination point from pickup of second trailer.

(c) The hourly rates of pay for employees shall be as follows:

4-1-70	7-1-70	1-1-71	7-1-71
$4.22	$4.37	$4.77	$5.02
1-1-72	7-1-72	1-1-73	
$5.27	$5.52	$5.72	

(d) The hourly rate of pay for Peddle Run employees shall be as follows:

Southwest

4-1-70	7-1-70	1-1-71	7-1-71
$4.30	$4.45	$4.85	$5.10
1-1-72	7-1-72	1-1-73	
$5.35	$5.60	$5.80	

Southeast

4-1-70	7-1-70	1-1-71	7-1-71
$4.28	$4.43	$4.83	$5.08

1-1-72	7-1-72	1-1-73
$5.33	$5.60	$5.80

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ARTICLE 54

Two-Man Operation

Section 1

The following rates of pay shall prevail for the two-man operation:

(a) Two-Man Rate per Mile

	Double Bottoms Not Exceeding Two 30′ Trailers	
April 1, 1970	15.085	15.835
July 1, 1971	16.085	16.835
July 1, 1972	16.835	17.585

(b) Single Man Rate

April 1, 1970	7.5425	7.9175
July 1, 1971	8.0425	8.4175
July 1, 1972	8.4175	8.7925

Section 2

Hourly Rates of Pay

Hourly rates of pay:

4-1-70	7-1-70	1-1-71	7-1-71
$4.22	$4.37	$4.77	$5.02
1-1-72	7-1-72	1-1-73	
$5.27	$5.52	$5.72	

The rate of pay for pickup and delivery or delay time shall be as follows: Pickup and delivery shall be paid for at the full hourly rate for each man. Both drivers or two-man operations shall receive the same

rate of pay when delayed on pickup and delivery. Full allowance for breakdown, layover, impassable highway and deadheading time and for lodging, etc., as specified elsewhere in this Agreement, shall apply for both men.

There shall be no allowance for time spent taking fuel and oil enroute between terminals.

Flagrant abuse of free time shall constitute a violation of this Section, and shall be subject to the grievance machinery of Article 44.

Section 3

There shall be no two-man operation on runs less than four hundred (400) miles with an eight hundred (800) mile round trip unless otherwise agreed to.

Section 4

Sleeper-Cab Operations

Sleeper cab operations shall be between designated terminals with a designated home terminal. The A.B.C. dispatch principle shall apply. An Employer shall not operate sleepers over the same route to haul local freight originating at the origin point and destined to the destination point of a bid through run or leg of a bid relay run, except to move an unusual or overflow of local freight, and in such event regular employees bid on that run shall have full guar-

teed preference unless otherwise agreed.

Section 5

Where sleeper cab employee is required to lay over away from his home terminal, layover pay shall commence following the twelfth (12th) hour after the end of the run. If employee is held over the twelfth (12th) hour, he shall be guaranteed two (2) hours pay, in any event, for layover time. (Mechanical breakdown and equipment failure is not to be included in the two (2) hour guarantee, but employee will be paid for actual time delayed only in such event.) If he is held over more than two (2) hours, he shall receive layover pay for each hour held over up to eight (8) hours in the first twenty (20) hours of layover period, commencing after the run ends. This pay shall be in addition to the pay to which the employee is entitled if he is put to work at any time within the twenty (20) hours after the run ends. The same principle shall apply to each succeeding eighteen (18) hours, and layover pay shall commence after the tenth (10th) hour. The layover provision of this Agreement shall apply at only one away-from-home terminal, and all time spent at all other points touched on the round trip from the home ter-

minal, exclusive of mean time, is to be paid for at the full hourly rate to each man. The layover point shall be designated on the driver's original orders prior to the dispatch from point of origin and shall remain the same whether or not the driver touches that point. Likewise the destination and any via point or points on each dispatch shall be designated on the driver's orders prior to the dispatch from A, B or C. If the dispatch of a sleeper team is broken, they will be paid their original dispatch plus miles driven off route and work performed off route.

All sleeper teams must be sent to their home terminal on their third dispatch, unless otherwise agreed to. The layover

provision of this Agreement is to be applicable at such away-from-home terminal the first time reached on a round trip away from the home terminal. Upon the second or subsequent arrival at such away-from-home terminal prior to return to the home terminal, all time shall be paid for both men, and the layover provisions shall not apply.

The Employer shall provide in his dispatch rules and/or procedures 24-hours off at the home terminal at

least once a week unless otherwise agreed to.

It shall not be considered a violation of the layover clause for an employee to take less than a statutory eight (8) hour rest period.

Section 6

Bedding and fresh linens for sleeper cabs to be furnished and maintained by the Employer in a clean and sanitary condition. Complaints with respect to width, depth and condition of mattresses shall be subject to the grievance procedure.

1964 Sleeper Equipment and all new sleeper equipment thereafter must be provided with air-conditioning or a mechanical cooling system and heating appliances. In the event of mechanical failure of such air-conditioning and heating appliances repairs shall be made at the first point of breakdown where proper facilities are available. The breakdown time for air-conditioning is to be applied as follows: The drivers will not be paid for down time enroute while getting air-conditioning fixed but will get paid for heating appliances. In any event drivers will be paid under the away-from-home terminal breakdown clause at point of destination for such repairs.

Section 7.

All regular sleeper runs shall be posted for bid once each six (6) months. The number of regular runs to be posted shall be determined by taking seventy-five per cent (75%) of the average number of runs operated by sleeper between two (2) or more designated points for a period of six (6) months.

All regular runs shall be posted in an open bid.

Once teams are so established, drivers shall be allowed by mutual agreement to trade positions within ten (10) days following close of a bid. Driver-teams are not to be otherwise separated for a period of the bid except in cases of emergency or reduction in force unless otherwise agreed to.

A driver choosing to separate shall operate off the extra board for the duration of the bid period. Regular bid sleeper teams shall be dispatched on a rotating basis unless otherwise mutually agreed. Extra board drivers at the home terminal shall be dispatched on a rotating first-in-first out basis.

Sleeper teams may have ten (10) hours off at their home terminal upon request at the time of arrival.

Upon the expiration of the ten (10) hour period the team assumes its proper position on the board, unless mutually agreed.

Section 8.

Call Time

Regular bid sleeper drivers who are off duty in the home terminal shall be notified between the hours of 4:00 p.m. and 6 p.m. if they are to be expected to report for work between

the hours of 7:00 p.m. and 7:00 a.m. Above schedule can be changed only by mutual agreement between Local Union and Employer.

Section 9.

Sleeper teams shall be dispatched out of the away-from-home terminal back to their home terminal in order of their dispatch out of their home terminal provided the team arrives within its scheduled arrival time. The team with the earliest scheduled arrival at the away-from-home terminal may be dispatched to other destinations prior to their return to their home terminal, only if there is no return dispatch available upon their arrival at the away-from-home terminal unless otherwise mutually agreed to.

Section 10.

All employees shall be dispatched to home terminal out of the foreign terminal ahead of home domiciled employees.

Section 11.

Only two (2) men shall be permitted in sleeper cab equipment at any one time except in case of emergency, an Act of God, or where new type equipment is put into operation. In no event, shall a master driver be in the cab in addition to the two regular drivers for more than three hundred (300) miles and then only if requested by a majority of the regular drivers or by agreement of the team involved.

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NEGOTIATING COMMITTEE

FOR THE EMPLOYEES:

NATIONAL OVER-THE-ROAD AND CITY CARTAGE POLICY AND NEGOTIATING COMMITTEE

Frank E. Fitzsimmons
(Chairman)

Murray W. Miller
Joseph Trerotola
William Presser
William McCarthy
Roy L. Williams
M. Ralph Dixon
Robert Flynn
A. J. Hardy
Elvin E. Hughes
Weldon L. Mathis
Verne Milton
Joseph W. Morgan
Walter Shea
B. M. Waggoner
Al Weiss

SOUTHERN CONFERENCE OF TEAMSTERS

Murray W. Miller,
Chairman
W. C. Smith
Howard Jones
J. W. Morgan
M. R. Dixon
C. D. Winters
G. Sam Webb
C. H. Augustine
Luther A. Watson
Albert J. Johnson
Odell Smith
W. L. Piland
W. M. Hays

FOR THE EMPLOYERS:

TRUCKING EMPLOYERS, INC.

R. F. Beagle
(Chairman)

Arthur Imperatore
Vincent R. Dagen
Donald E. Cantlay
R. S. McIlvennan
M. M. Gordon
Rudy Pulliam
John A. Murphy
Robert F. Todd

IN BEHALF OF THE FOLLOWING ASSOCIATIONS:

SOUTHEASTERN AREA MOTOR CARRIERS LABOR RELATIONS ASSOCIATION

SOUTHWEST OPERATORS ASSOCIATION

R. V. Pulliam
(Chairman)

W. L. Swain, Jr.
M. B. Harp
Jimmy Black
W. J. Tittle
John F. Spickerman
Joe Varble
Jim Bates
W. G. Karsten
J. A. Pratt

In Witness Hereof the undersigned do duly execute The National Master Agreement and Supplemental Agreement (and Riders, if any) set forth herein.

FOR THE UNION

LOCAL UNION No. . . . . , affiliate of I. B. of T., C. W., & H., of A.

By . . . . . .
(Signed)

Its . . . . . .
(Title)

For the Company

. . . . . .

. . . . . .
(Company)

By .....
(Signed)

Its .....
(Title)

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HOME OFFICE ADDRESS:

Street:

City:

State:

Date Signed:

This Agreement is approved as to form only by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and in doing so the International Union assumes no liability whatsoever under this Agreement for the performance thereof or otherwise, and by such approval does not become a party to the Agreement.

APPROVED:

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

Frank E. Fitzsimmons
General Vice President

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D. PLAINTIFF'S EXHIBITS

1. **Plaintiff's Exhibit 214**

PART 391, QUALIFICATION OF DRIVERS

MOTOR CARRIER SAFETY REGULATIONS

Title 49—Transportation

Chapter III—Federal Highway Administration, Department of Transportation

Subchapter B—Motor Carrier Safety Regulations
Includes revisions May 1, 1971
Federal Highway Administration
Bureau of Motor Carrier Safety
Washington, D.C. 20591

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Part 391—Qualification of Drivers

Subpart A—General

Sec.

391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.

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391.7 Aiding or abetting violations.

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391.15 Disqualification of drivers.

Subpart C—Background and Character

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391.25 Annual review of driving record.

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391.37 Equivalent of written examination.

Subpart E—Physical Qualifications and Examinations

391.41 Physical qualifications for drivers.

391.43 Medical examination; certificate of physical examination.

391.45 Persons who must be medically examined and certified.

391.47 Conflict of medical evaluations.

391.49 Waiver of certain physical defects.

Subpart F—Files and Records

391.51 Driver qualification files.

Subpart G—Exemptions

391.61 Drivers who were regularly employed before January 1, 1971.

391.63 Intermittent, casual, or occasional drivers.

391.65 Drivers furnished by other motor carriers.

Authority: The provision of this Part 391 issued under sec. 204, Interstate Commerce Act, as amended, 49 U.S.C. 304; sec. 6, Department of Transportation Act, 49 U.S.C. 1655; delegation of authority in 49 CFR Part 1.

Subpart A—General

§ 391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.

(a) The rules in this part establish minimum qualifications for persons who drive motor vehicles as, for, or on behalf of motor carriers. The rules in this part also establish minimum duties of motor carriers with respect to the qualifications of their drivers.

(b) The rules in this part, and in other parts of this subchapter, do not prevent a motor carrier from imposing more stringent or additional qualifications, requirements, examinations, or certificates than are imposed by these rules.

(c) A motor carrier who employs himself as a driver must comply with both the rules in this part that apply to motor carriers and the rules in this part that apply to drivers.

§ 391.3 Definitions.

(a) The term "motor carrier" includes a motor carrier and the agents, officers, representatives, and employees of a motor carrier who are responsible for the hiring, supervision, training, assignment, or dispatching of drivers.

(b) The term "Director" means the Director of the Bureau of Motor Carrier Safety.

(c) A motor carrier "employs" a person as a driver within the meaning of this part whenever it requires or permits that person

to drive a motor vehicle (whether or not the vehicle is owned by the motor carrier) in furtherance of the business of the motor carrier.

§ 391.5 **Familiarity with rules.** Each motor carrier and each driver shall know, and be familiar with, the rules in this part.

§ 391.7 **Aiding or abetting violations.** No person shall aid, abet, encourage, or require a motor carrier or a driver to violate the rules in this part.

Subpart B—Qualification and Disqualification of Drivers

§ 391.11 **Qualifications of drivers.**

(a) A person shall not drive a motor vehicle unless he is qualified to drive a motor vehicle. Except as provided in § 391.-63, a motor carrier shall not require or permit a person to drive a motor vehicle unless that person is qualified to drive a motor vehicle.

(b) Except as provided in § 391.61, a person is qualified to drive a motor vehicle if he—

(1) Is at least 21 years old;

(2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

(3) Can, by reason of experience, training, or both, safely operate the type of motor vehicle he drives;

(4) Can, by reason of experience, training, or both, determine whether the cargo he transports (including baggage in a passenger-carrying motor vehicle) has been properly located, distributed, and secured in or on the motor vehicle he drives;

(5) Is familiar with methods and procedures for securing cargo in or on the motor vehicle he drives.

(6) Is physically qualified to drive a motor vehicle in accordance with § 391.41;

(7) Has been issued a currently-valid motor vehicle operator's license or permit;

(8) Has prepared and furnished the motor carrier that employs him with the list of violations or the certificate as required by § 391.27;

(9) Is not disqualified to drive a motor vehicle under the rules in § 391.15;

(10) Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with § 391.31, or has presented an operator's license or a certificate of road test which the motor carrier that employs him has accepted as equivalent to a road test in accordance with § 391.33;

(11) Has taken a written examination and has been issued a certificate of written examination in accordance with § 391.35, or has presented a certificate of written examination which the motor carrier that employs him has accepted as equivalent to a written examination in accordance with § 391.27; and

(12) Has completed and furnished the motor carrier that employs him with an application for employment in accordance with § 391.21.

§ 391.15 **Disqualification of drivers.**

(a) A driver who is disqualified shall not drive a motor vehicle. A motor carrier shall not require or permit a driver who is disqualified to drive a motor vehicle.

(b) A driver is disqualified—

(1) For 3 years after he has been convicted of, or forfeited bond or collateral upon a charge of committing any of the following criminal offenses:

(i) A felony committed after December 31, 1970 and involving the use of a vehicle by that driver; or

(ii) A crime committed after December 31, 1970 and involving the manufacturing, knowing transportation, knowing possession, sale, or habitual use of amphetamines, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug; or

(iii) Operating a vehicle after December 31, 1970 and while under the influence of alcohol, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug; or

(iv) Leaving the scene of an accident after December 31, 1970, if the accident resulted in personal injury or death; or

(2) For the duration of the driver's loss of his privilege to operate a commercial vehicle on public highways, either temporarily or permanently, by reason of the suspension, revocation, withdrawal, or denial of any operator's license, permit, or privilege, until that operator's license, permit or privilege is restored by the authority that suspended, revoked, withdrew or denied it.

Subpart C—Background and Character

§ 391.21 Application for employment.

(a) Except as provided in Subpart G of this part, a person shall not drive a motor vehicle unless he has completed and furnished the motor carrier that employs him with an application for employment that meets the requirements of paragraph (b) of this section.

(b) The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant,

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must be signed by him, and must contain the following information:

(1) The name and address of the employing motor carrier;

(2) The applicant's name, address, date of birth, and social security number;

(3) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;

(4) The date on which the application is submitted;

(5) The issuing State, number, and expiration date of each unexpired motor vehicle operator's license or permit that has been issued to the applicant;

(6) The nature and extent of the applicant's experience in the operation of motor vehicles, including the type of equipment (such as buses, trucks, truck tractors, semitrailers, full trailers, and pole trailers) which he has operated;

(7) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;

(8) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;

(9) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;

(10) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted, together with the dates he was employed by, and his reason for leaving the employ of, each employer; and

(11) The following certification and signature line, which must appear at the end of the application form and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

....

(Date) (Applicant's signature)

(c) A motor carrier may require an applicant to provide information in addition to the information required by paragraph (b) of this section on the application form.

(d) Before an application is submitted, the motor carrier shall inform the applicant that the information he provides in accordance with paragraph (b) (10) of this section may be used, and the applicant's prior employers may be contacted, for the purpose of investigating the applicant's background as required by § 391.23.

§ 391.23 **Investigation and inquiries.**

(a) Except as provided in Subpart G of this part, each motor carrier shall make the following investigations and inquiries with respect to each driver it employs, other than a person who has

been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971:

(1) An inquiry into the driver's driving record during the preceding 3 years to the appropriate agency of every State in which the driver held a motor vehicle operator's license or permit during those 3 years; and

(2) An investigation of the driver's employment record during the preceding 3 years.

(b) The inquiry to State agencies required by paragraph (a) (1) of this section must be made within 30 days of the date the driver's employment begins and shall be made in the form and manner those agencies prescribe. A copy of the response by each State agency, showing the driver's driving record or certifying that no driving record exists for that driver, shall be retained in the carrier's files as part of the driver's qualification file.

(c) The investigation of the driver's employment record required by paragraph (a)(2) of this section must be made within 30 days of the date his employment begins. The investigation may consist of personal interviews, telephone interviews, letters, or any other method of obtaining information that the carrier deems appropriate. Each motor carrier must make a written record with respect to each past employer who was contacted. The record must include the past employer's name and address, the date he was contacted, and his comments with respect to the driver. The record shall be retained in the motor carrier's files as part of the driver's qualification file.

§ 391.25 **Annual review of driving record.**

Except as provided in Subpart G of this part, each motor carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that

driver meets minimum requirements for safe driving or is disqualified to drive a motor vehicle pursuant to § 391.15. In reviewing a driving record, the motor carrier must consider any evidence that the driver has violated applicable provisions of the Motor Carrier Safety Regulations and the Hazardous Materials Regulations. The motor carrier must also consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public.

A note, setting forth the date upon which the review was performed and the name of the person who reviewed the driving record, shall be included in the driver's qualification file.

§ 391.27 **Record of violations.**

(a) Except as provided in Subpart G of this part, each motor carrier shall, at least once very 12 months, require each driver it employs to prepare and furnish it with a list of all violations of motor vehicle traffic laws and ordinances (other than violations involving only parking) of which the driver has been convicted or on account of which he has forfeited bond or collateral during the preceding 12 months.

(b) Each driver shall furnish the list required in accordance with paragraph (a) of this section. If the driver has not been convicted of, or forfeited bond or collateral on account of, any violation which must be listed, he shall so certify.

(c) The form of the driver's list or certification shall be prescribed by the motor carrier. The following form may be used to comply with this section:

Motor Vehicles Driver's Certification

I certify that the following is a true and complete list of traffic violations (other than parking violations) for which I have been convicted or forfeited bond or collateral during the past 12 months.

Date of Conviction	Offense	Location	Type of vehicle operated
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

If no violations are listed above, I certify that I have not been convicted or forfeited bond or collateral on account of any violation required to be listed during the past 12 months.

.....	.....
(Date of certification)	(Driver's signature)
.....	.....
(Motor carrier's name)	(Motor carrier's address)
.....	.....
(Reviewed by: Signature)	(Title)

(d) The motor carrier shall retain the list or certificate required by this section, or a copy of it, in its files as part of the driver's qualification file.

Subpart D—Examinations and Tests

§ 391.31 Road test.

(a) Except as provided in §§ 391.33 and 391.61, a person shall not drive a motor vehicle unless he has first successfully completed a road test and has been issued a certificate of driver's road test in accordance with this section.

(b) The road test shall be given by the motor carrier or a person designated by it. However, a driver who is a motor carrier must be given the test by a person other than himself. The test shall be given by a person who is competent to evaluate and determine whether the person who takes the test has demonstrated that he is capable of operating the vehicle, and associated equipment, that the motor carrier intends to assign him.

(c) The road test must be of sufficient duration to enable the person who gives it to evaluate the skill of the person who takes it at handling the motor vehicle, and associated equipment, that the motor carrier intends to assign to him. As a minimum, the person who takes the test must be tested, while operating the type of motor vehicle the motor carrier intends to assign him, on his skill at performing each of the following operations.

(1) The pretrip inspection required by § 392.7 of this subchapter;

(2) Coupling and uncoupling of combination units, if the equipment he may drive includes combination units;

(3) Placing the vehicle in operation;

(4) Use of the vehicle's controls and emergency equipment;

(5) Operating the vehicle in traffic and while passing other vehicles;

(6) Turning the vehicle;

(7) Braking, and slowing the vehicle by means other than braking; and

(8) Backing and parking the vehicle.

(d) The motor carrier shall provide a road test form on which the person who gives the test shall rate the performance of the person who takes it at each operation or activity which is a part of the test. After he completes the form, the person who gave the test shall sign it.

(e) If the road test is successfully completed, the person who gave it shall complete a certificate of driver's road test in substantially the form prescribed in paragraph (f) of this section.

(f) The form for the certificate of driver's road test is substantially as follows:

Certificate of Road Test

Driver's name .....

Social Security No. .....

Operator's or Chauffeur's License No. .....

State .....

Type of power unit ..... Type of trailer(s) .....

If passenger carrier, type of bus .....

This is to certify that the above-named driver was given a road test under my supervision on ..... 19.... consisting of approximately ..... miles of driving.

It is my considered opinion that this driver possesses sufficient driving skill to operate safely the type of commercial motor vehicle listed above.

....

(Signature of examiner) (Title)

.....

(Organization and address of examiner)

(g) A copy of the certificate required by paragraph (e) of this section shall be given to the person who was examined. The motor carrier shall retain in the driver qualification file of the person who was examined—

(1) The original of the signed road test form required by paragraph (d) of this section; and

(2) The original, or a copy of, the certificate required by paragraph (e) of this section.

§ 391.33 **Equivalent of road test.**

(a) In place of, and as equivalent to, the road test required by § 391.31, a person who seeks to drive a motor vehicle may present, and a motor carrier may accept—

(1) A valid operator's license which has been issued to him by a State that licenses drivers to operate specific categories of motor vehicles and which, under the laws of that State, licenses him after successful completion of a road test in a motor vehicle of the type the motor carrier intends to assign to him; or

(2) A copy of a valid certificate of driver's road test issued to him pursuant to § 391.31 within the preceding 3 years.

(b) If a driver presents, and a motor carrier accepts, a license or certificate as equivalent to the road test, the motor carrier shall retain a legible copy of the license or certificate in its files as part of the driver's qualification file.

(c) A motor carrier may require any person who presents a license or certificate as equivalent to the road test to take a road test or any other test of his driving skill as a condition to his employment as a driver.

§ 391.35 **Written examination.**

(a) Except as provided in §§ 391.37 and 391.61, a person shall not drive a motor vehicle unless he has first taken a written examination and has been issued a certificate of written examination in accordance with this section.

(b) The objective of the written examination is to instruct prospective drivers in the rules and regulations established by the Federal Highway Administration pertaining to commercial vehicle safety. It is an instructional tool only, and a person's qualifications to drive a motor vehicle under the rules in this part are not affected by his performance on the examination. Motor carriers subject to title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1-2000e-15), Executive Order 11246, or both, are cautioned that neither the written examination requirements in this section nor any other rule in this part authorizes a motor carrier to violate the provisions of the Act, the Executive Order, or regulations issued under them with respect to equal opportunity in employment.

(c) The written examination shall be given by the motor carrier or a person designated by it, on a form prescribed by the motor carrier.

(d) Prior to, and during, the examination, the person who takes it shall be permitted to examine and consult a copy of the Motor Carrier Safety Regulations (Subchapter B of this title) in addition to any other material explaining the provisions of those regulations that the motor carrier may provide. There is no time limit for completing the examination, and persons taking it shall be so advised in advance.

(e) The examination shall consist of at least 30 questions, covering the examinee's knowledge of the Motor Carrier Safety Regulations and, in the case of a person who may drive a vehicle transporting hazardous materials, the Hazardous Materials

Regulations. The questions shall be taken from the list of questions published by the Bureau of Motor Carrier Safety in Appendix C to this supchapter.[1]

(f) After the examinee completes the examination, the person who administered it shall advise him of the correct answers to any questions he failed to answer correctly. The motor carrier may also provide the examinee with such additional instruction in the pertinent regulations as appears to be warranted on the basis of his performance on the examination.

(g) The motor carrier, or the person who administered the examination on the motor carrier's behalf, shall provide every person who completes the examination with a certificate in substantially the following form.

Certificate of Written Examination

This is to certify that the person whose signature appears below has completed the written examination under my supervision in accordance with the provisions of § 391.35 of the Motor Carrier Safety Regulations.

.....

(Signature of person taking examination)

.....

(Date of examination)

.....

(Location of examination)

.....

(Signature of examiner)

[1] Copies of the list of questions (and answers to the questions) may be obtained by writing to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20591, or to any Regional Federal Highway Administrator at the address given in § 390.40 of this subchapter.

.....

(Title)

.....

(Organization and address of examiner)

(h) A copy of the certificate required by paragraph (d) of this section shall be given to the person who was examined. The motor carrier shall retain, in the driver qualification file of the person who was examined—

(1) The original, or a copy of, the certificate required by paragraph (g) of this section;

(2) The questions asked on the examination; and

(3) The person's answers to those questions.

§ 391.37 **Equivalent of written examination.**

(a) In place of, and as equivalent to, the written examination required by § 391.35, a person who seeks to drive a motor vehicle may present, and a motor carrier may accept, a valid certificate of written examination issued pursuant to paragraph (d) of that section within the preceding 3 years.

(b) If a motor carrier accepts a certificate as equivalent to the written examination, it shall retain a legible copy of the certificate in its files as part of the driver's qualification file.

(c) A motor carrier may require any person who presents a certificate as equivalent to the written examination to take the written examination prescribed in § 391.35 or participate in any other instructional process designed to acquaint him with the provisions of Parts 390-397 of this subchapter.

Subpart E—Physical Qualifications and Examinations

§ 391.41 Physical qualifications for drivers.

(a) A person shall not drive a motor vehicle unless he is physically qualified to do so and has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a motor vehicle.

(b) A person is physically qualified to drive a motor vehicle if he——

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a waiver pursuant to § 391.49;

(2) Has no impairment of the use of a foot, a leg, a hand, fingers, or an arm, and no other structural defect or limitation, which is likely to interfere with his ability to control and safely drive a motor vehicle or has been granted a waiver pursuant to § 391.49 upon a determination that the impairment will not interfere with his ability to control and safely drive a motor vehicle;

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;

(5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to control and drive a motor vehicle safely;

(6) Has no current clinical diagnosis of high blood pressure likely to interfere with his ability to operate a motor vehicle safely;

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his ability to control and operate a motor vehicle safely;

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his ability to drive a motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acquity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber;

(11) First perceives a forced whispered voice at not less than 5 feet in the better ear without use of a hearing aid, or, if tested by use of an audiometric device, does not have a loss greater than 25-30 decibels at 500. Hz, 1,000 Hz, and 2,000 Hz in the better ear without a hearing aid;

(12) Does not use an amphetamine, narcotic, or any habit-forming drug; and

(13) Has no current clinical diagnosis of alcoholism.

§ 391.43 **Medical examination; certificate of physical examination.**

(a) Except as provided in paragraph (b) of this section, the medical examination shall be performed by a licensed doctor of medicine or osteopathy.

(b) A licensed optometrist may perform so much of the medical examination as pertains to visual acuity, field of vision, and the ability to recognize colors as specified in subparagraph (10) of § 391.41 (b).

(c) The medical examination shall be performed, and its results shall be recorded, substantially in accordance with the following instructions and examination form:

Instructions for Performing and Recording
Physical Examinations

The examining physician should review these instructions before performing the physical examination. Answer each question yes or no where appropriate.

The examining physician should be aware of the rigorous physical demands and mental and emotional responsibilities placed on the driver of a commercial motor vehicle. In the interest of public safety the examining physician is required to certify that the driver does not have any physical, mental, or organic defect of such a nature as to affect the driver's ability to operate safely a commercial motor vehicle.

General information. The purpose of this history and physical examination is to detect the presence of physical, mental, or organic defects of such a character and extent as to affect the applicant's ability to operate a motor vehicle safely. The examination should be made carefully and at least as complete as indicated by the attached form. History of certain defects may

be cause for rejection or indicate the need for making certain laboratory tests or a further, and more stringent, examination. Defects may be recorded which do not, because of their character or degree, indicate that certification of physical fitness should be denied. However, these defects should be discussed with the applicant and he should be advised to take the necessary steps to insure correction, particularly of those which, if neglected, might lead to a condition likely to affect his ability to drive safely.

General appearance and development. Note marked overweight. Note any posture defect, perceptible limp, tremor, or other defects that might be caused by alcoholism, thyroid intoxication, or other illness. The Motor Carrier Safety Regulations provide that no driver shall use a narcotic or other habit-forming drug.

Head—eyes. When other than the Snellen Chart is used, the results of such test must be expressed in values comparable to the standard Snellen test. If the applicant wears corrective lenses, these should be worn while applicant's visual acuity is being tested. If appropriate, indicate on the Medical Examiner's Certificate by checking the box, "Qualified only when wearing corrective lenses." In recording distance vision use 20 feet as normal. Report all vision as a fraction with 20 as numerator and the smallest type read at 20 feet as denominator. Note ptosis, discharge, visual fields, ocular muscle imbalance, color blindness, corneal scar, exophthalmos, or stabismus, uncorrected by corrective lenses. Monocular or aphacic drivers are not qualified to operate commercial motor vehicles under existing Motor Carrier Safety Regulations. If the driver habitually wears contact lenses, or intends to do so while driving, there should be sufficient evidence to indicate that he has good tolerance and is well adapted to their use. The use of contact lenses should be noted on the record.

Ears. Note evidence of mastoid or middle ear disease, discharge, symptoms of aural vertigo, or Meniere's Syndrome. When recording hearing, record distance from patient at which a forced whispered voice can first be heard. If audiometer is used to test hearing, record decible loss at 500 Hz, 1,000 Hz, and 2,000 Hz.

Throat. Note evidence of disease, irremediable deformities of the throat likely to interefere with eating or breathing, or any laryngeal condition which could interfere with the safe operation of a motor vehicle.

Thorax-heart. Stethoscopic examination is required. Note murmurs and arrhythmias, and any past or present history of cardiovascular disease, of a variety known to be accompanied by syncope, dyspnea, collapse, enlarged heart, or congestive heart failures. Electrocardiogram is required when findings so indicate:

Blood pressure. Record with either spring or mercury column type of sphygomomanometer. If the blood pressure is consistently above 160/90 mm. Hg., further tests may be necessary to determine whether the driver is qualified to operate a motor vehicle.

Lungs. If any lung disease is detected, state whether active or arrested. If arrested, your opinion as to how long it has been quiescent.

Gastrointestinal system. Note any diseases of the gastrointestinal system.

Abdomen. Note wounds, injuries, scars, or weakness of muscles of abdominal walls sufficient to interefere with normal function. Any hernia should be noted if present, State how long and if adequately contained by truss.

Abnormal masses. If present, note location, if tender, and whether or not applicant knows how long they have been present. If the diagnosis suggests that the condition might interfere with the control and safe operation of a motor vehicle, more stringent tests must be made before the applicant can be certified.

Tenderness. When noted, state where most pronounced, and suspected cause. If the diagnosis suggests that the condition might interfere with the control and safe operation of a motor vehicle, more stringent tests must be made before the applicant can be certified.

Genito-urinary. Urinalysis is required. Acute infections of the genito-urinary tract, as defined by local and State public health laws, indications from urinalysis of uncontrolled, diabetes, symptomaticalbumin-urea in the urine, or other findings indicative of health conditions likely to interfere with the control and safe operation of a motor vehicle, will disqualify an applicant from operating a motor vehicle.

Neurological. If positive Rhomberg is reported, indicate degrees of impairment. Pupillary reflexes should be reported for both light and accommodation. Knee jerks are to be reported absent only when not obtainable upon reinforcement and as increased when foot is actually lifted from the floor following a light blow on the patella, sensory ribratory and positional abnormalities should be noted.

Extremities. Carefully examine upper and lower extremities. Record the loss or impairment of a leg, foot, toe, arm, hand, or fingers. Note any and all deformities, the presence of atrophy, semiparalysis or paralysis, or varicose veins. If a hand or finger deformity exists, determine whether sufficient grasp is present to enable the driver to secure and maintain a grip on the steering wheel. If a leg deformity exists, determine whether sufficient mobility and strength exist to enable the driver to operate pedals properly. Particular attention should be given to

and a record should be made of, any impairment or structural defect which may interfere with the driver's ability to operate a motor vehicle safely.

Spine. Note deformities, limitation of motion, or any history of pain, injuries, or disease, past or presently experienced in the cervical or lumbar spine region. If findings so dictate, radiologic and other examinations should be used to diagnose congenital or acquired defects; or spondylolisthesis and scoliosis.

Recto-genital studies. Diseases or conditions causing discomfort should be evaluated carefully to determine the extent to which the condition might be handicapping while lifting, pulling, or during periods of prolonged driving that might be necessary as part of the driver's duties.

Laboratory and other special findings. Urinalysis is required, as well as such other tests as the medical history or findings upon physical examination may indicate are necessary. A serological test is required if the applicant has a history of luetic infection or present physical findings indicate the possibility of latent syhilis. Other studies deemed advisable may be ordered by the examining physician.

Diabetes. If insulin is necessary to control a diabetic condition, the driver is not qualified to operate a motor vehicle. If mild diabetes is noted at the time of examination and it is stabilized by use of a hypoglycemic drug and a diet that can be obtained while the driver is on duty, it should not be considered disqualifying. However, the driver must remain under adequate medical supervision.

The physician must date and sign his findings upon completion of the examination.

Examination to Determine Physical Condition of Drivers

Driver's name ..... ☐ New Certification

Adddress ..... ☐ Recertification

Social Security No. .....

Date of birth ..... Age ....

Health History

Yes	No	
☐	☐	Head or spinal injuries.
☐	☐	Seizures, fits, convulsions or fainting.
☐	☐	Extensive confinement by illness or injury.
☐	☐	Cardiovascular disease.
☐	☐	Tuberculosis.
☐	☐	Syphilis.
☐	☐	Gonorrhea.
☐	☐	Diabetes.
☐	☐	Gastrointestinal ulcer.
☐	☐	Nervous stomach.
☐	☐	Rheumatic fever.
☐	☐	Asthma.
☐	☐	Kidney disease.
☐	☐	Muscular disease.
☐	☐	Suffering from any other disease.
☐	☐	Permanent defect from illness, disease or injury.
☐	☐	Psychiatric disorder.
☐	☐	Any other nervous disorder.

If answer to any of the above is yes, explain: .....
.....
.....
.....

Physical Examination

General appearance and development:
Good ..... Fair ..... Poor .....

Vision: For distance:
Right 20/..... Left 20/.....
☐ Without corrective lenses.
☐ With corrective lenses if worn.
Evidence of disease or injury:
Right ..... Left .....
Color Test .....
Horizontal field of vision:
Right .....° Left .....°

Hearing:
Right ear ..... Left ear .....
Disease or injury .....

Audiometer Test (complete only if audiometer is used to test hearing) decibel loss at 500 Hz ....., at 1,000 Hz ....., at 2,000 Hz .....

Throat .....

Thorax:
Heart .....
If organic disease is present, is it fully compensated? .....
Blood pressure:
Systolic ..... Diastolic .....
Pulse: Before exercise .....

Immediately after exercise .....
Lungs .....

Abdomen:
Scars ..... Abnormal masses ..... Tenderness .....
Hernia: Yes ..... No .....
If so, where? .....
Is truss worn? .....

Gastrointestinal:
Ulceration or other disease:
Yes ..... No .....

Genito-Urinary:
Scars .....
Urethral discharge .....

Reflexes:
Rhomberg .....
Pupillary ..... Light R ..... L .....
Accommodation Right ..... Left .....
Knee Jerks:
Right:
Normal ..... Increased ..... Absent .....
Left:
Normal ..... Increased ..... Absent .....
Remarks .....

Extremities:
Upper .....
Lower .....
Spine .....

Laboratory and other Special Findings:
Urine: Spec. Gr. ..... Alb. ..... Sugar .....

Other laboratory data (Serology, etc.) .....

.....

Radiological data .....

Electrocardiograph .....

General comments .....

.....

(Date of examination)

.....

(Address of examining doctor)

.....

(Name of examining doctor)
(Print)

.....

(Signature of examining doctor)

Note: This section to be completed only when visual test is conducted by a licensed optometrist.

.....

(Date of examination)

.....

(Address of optometrist)

.....

(Name of optometrist)
(Print)

.....

(Signature of optometrist)

(d) If the medical examiner finds that the person he examined is physically qualified to drive a motor vehicle in accordance with § 391.41(b), he shall complete a certificate in the form prescribed in paragraph (e) of this section and furnish one copy

to the person who was examined and one copy to the motor carrier that employs him.

(e) The medical examiners certificate shall be in accordance with the following form:

MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined .....
(Driver's name (Print))

in accordance with the Motor Carrier Safety Regulations (49 CFR 391.41—391.49) and with knowledge of his duties, I find him qualified under the regulations.

☐ Qualified only when wearing corrective lenses.

A completed examination form for this person is on file in my office at .....
Address

....
(Date of Examination) (Name of examining doctor (Print))

.....
(Signature of examining doctor)

.....
(Signature of driver)

.....
(Address of driver)

§ 391.45 **Persons who must be medically examined and certified.**

The following persons must be medically examined and certified in accordance with § 301.43 as physically qualified to drive a motor vehicle:

(a) Any person who has not been medically examined and certified as physically qualified to drive a motor vehicle;

(b) Any driver who has not been medically examined and certified as qualified to drive a motor vehicle during the preceding 24 months; and

(c) Any driver whose ability to perform his normal duties has been impaired by a physical or mental injury or disease.

§ 391.47 **Conflict of medical evaluations.**

(a) If, having performed medical examinations of a person pursuant to § 391.43, two or more medical examiners disagree as to whether that person is physically qualified to drive a motor vehicle, the Director, on application of that person or a motor carrier, may determine whether that person is physically qualified to drive a motor vehicle.

(b) An application under this section must be accompanied by the physical examination reports of the disagreeing medical examiners. The application must demonstrate to the Director's satisfaction that before he found the person physically qualified to drive, an examiner who did so was fully aware of the person's complete medical history and of the nature of the work the person would perform if he were found physically and otherwise qualified to drive a motor vehicle. As a minimum, the examiner must have been informed of the type, size, and weight of the vehicles the person would drive, the distances he would traverse, the number of hours he would spend in an on-duty status, and the related duties (such as loading, unloading, climbing onto and descending from vehicles, and making repairs en route (if he would be required to do so)) that the person would perform.

(c) If the Director determines that the person is physically qualified to drive a motor vehicle, a motor carrier may accept the medical examiner's certificate issued to that person pursuant to §391.43.

§ 391.49 **Waiver of certain physical defects.**

(a) A person who is not physically qualified to drive under § 391.41(b) (1) or (2) and who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle, other than a motor vehicle which transports passengers or a motor vehicle which must be placarded or marked in accordance with § 177.823 of this Title 49 (relating to placards or markings upon vehicles which transport hazardous materials), if the Director has granted an application for a waiver with respect to that person.

(b) An application for a waiver must be submitted jointly by the person who seeks a waiver of his physical disqualification (the individual applicant) and by the motor carrier that will employ him if the application is granted. The application must be addressed to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20591.

(c) An application for a waiver must contain—

(1) A description of the type, size, and special equipment (if any) of the vehicles the individual applicant intends to drive, the general area and type of roads he intends to traverse while driving, the distances he intends to drive, the periods of time he will be on duty while driving, the nature of the commodities or cargo he intends to transport, the methods he or any other person will use to load and secure those commodities or cargo, and the nature and extent of his experience at operating motor vehicles of the type he intends to drive;

(2) An agreement by both applicants that the motor carrier will promptly file with the Director such reports as he may re-

quire, including reports about the driving activities, accidents, arrests, license suspensions, revocations, or withdrawals, and convictions which involve the individual applicant; and

(3) An agreement that, if a waiver is granted, it authorizes the individual applicant to drive in interstate commerce only when employed by the motor carrier that joined in his application.

(d) An application for a waiver must be accompanied with—

(1) At least two reports of medical examinations made pursuant to § 391.43, at least one of which was conducted by a medical examiner selected and compensated by the motor carrier, each of which includes the medical examiner's opinion concerning the individual applicant's ability to operate safely a motor vehicle of the type he intends to drive;

(2) A copy of the certificate of driver's road test that was issued to the individual applicant pursuant to § 391.31;

(3) A copy of the certificate of written examination that was issued to the individual applicant pursuant to § 391.35; and

(4) A copy of the individual applicant's application for employment made pursuant to § 391.21.

(e) An application for a waiver shall be signed by both the individual applicant and the motor carrier. If the motor carrier is a corporation, the application shall be signed by an officer of the corporation. If the motor carrier is a partnership, the application shall be signed by a partner. If the motor carrier is an individual proprietorship, the application shall be signed by the proprietor.

(f) The Director may deny the application or he may grant it in whole or in part and issue a waiver subject to such terms, conditions, and limitations as he deems consistent with safety and the public interest. A waiver is valid for a period not exceeding 2 years, and it may be renewed upon submission of a new application pursuant to this section.

(g) If the Director grants a waiver, he will notify each applicant by a letter, which sets forth the terms, conditions, and limitations of the waiver. The motor carrier shall retain the letter (or a legible copy of it) in its files as long as the individual applicant is employed by that motor carrier and for 3 years thereafter. The individual applicant shall have the letter (or a legible copy of it) in his possession whenever he drives a motor vehicle or is otherwise on duty.

(h) The Director may suspend a waiver at any time. The Director may revoke a waiver after the person to whom it was issued are given notice of the proposed revocation and a reasonable opportunity to be heard.

SUBPART F—FILES AND RECORDS

§ 391.51 Driver qualification files.

(a) Each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with his personnel file.

(b) The qualification file for a driver who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971, must include—

(1) The medical examiner's certificate of his physical qualification to drive a motor vehicle or a legible photographic copy of the certificate;

(2) The Director's letter granting a waiver of a physical disqualification, if a waiver was issued under § 391.49;

(3) The note relating to the annual review of his driving record required by § 391.25.

(4) The list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27; and

(5) Any other matter which relates to the driver's qualifications or ability to drive a motor vehicle safely.

(c) The qualification file for a regularly employed driver who has not been regularly employed by the motor carrier for a continuous period which began before January 1, 1971, must include—

(1) The documents specified in paragraph (b) of this section;

(2) The driver's application for employment completed in accordance with § 391.21;

(3) The responses of State agencies and past employers to the motor carrier's inquiries concerning the driver's driving record and employment pursuant to § 391.23.

(4) The certificate of driver's road test issued to the driver pursuant to § 391.31 (e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to § 391.33; and

(5) The questions asked, the answers the driver gave, and the certificate of written examination issued to him pursuant to § 391.35, or a copy of a certificate which the motor carrier accepted as equivalent to a written examination pursuant to § 391.37.

(d) The qualification file for an intermittent, casual, or occasional driver employed under the rules in § 391.63 must include—

(1) The medical examiner's certificate of his physical qualification to drive a motor vehicle or a legible photographic copy of the certificate;

(2) The certificate of driver's road test issued to the driver pursuant to § 391.31(e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to § 391.31;

(3) The questions asked, the answers the driver gave, and the certificate of written examination issued to him pursuant to § 391.35, or a copy of a certificate which the motor carrier accepted as equivalent to a written examination pursuant to § 391.37; and

(4) The driver's name, his social security number, and the identification number, type, and issuing State of his motor vehicle operator's license.

(e) The qualification file for a driver furnished by another motor carrier and employed under the rules in § 391.65 must include—

(1) The medical examiner's certificate of his physical qualication to drive a motor vehicle or a legible photographic copy of the certificate; and

(2) A copy of a certificate from the motor carrier that regularly employs the driver stating that the driver is fully qualified to drive a motor vehicle under the rules in this part.

(f) Except as provided in paragraph (g) of this section, each driver's qualification file shall be kept at the motor carrier's principal place of business for as long as a driver is employed by that motor carrier and for 3 years thereafter.

(g) Upon a request in writing to, and, with the approval of, the Director, a motor carrier may keep one or more of its drivers' qualification file or parts of files at a regional or terminal office that the Director approves.

SUBPART G—EXEMPTIONS

§ 391.61 **Drivers who were regularly employed before January 1, 1971.**

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), § 391.31 (relating to road tests), and § 391.35 (relating to written examinations) do not apply to a driver who has been a regularly employed driver (as defined in § 395.2(f) of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a motor vehicle if he fulfills the requirements of subparagraphs (1) through (9) of § 391.11(b) (relating to qualifications of drivers).

§ 391.63 **Intermittent, casual, or occasional drivers.**

(a) If a motor carrier employs a person who is not a regularly employed driver (as defined in § 395.2(f) of this subchapter) to drive a motor vehicle for a single trip or on an intermittent, casual, or occasional basis, the motor carrier shall comply with all requirements of this part, except that the motor carrier need not—

(1) Require the person to furnish an application for employment in accordance with § 391.21;

(2) Make the investigations and inquiries specified in § 391.23 with respect to that person,

(3) Perform the annual review of the person's driving record required by § 391.25; or

(4) Require the person to furnish a record of violations or a certificate in accordance with § 391.27.

(b) Before a motor carrier permits a person described in paragraph (a) of this section to drive a motor vehicle, the motor carrier must obtain his name, his social security number, and the identification number, type and issuing State of his motor vehicle operator's license. The motor carrier must retain that information in its files for 3 years after the person's employment by the motor carrier ceases.

§ 391.65 **Drivers furnished by other motor carriers.**

(a) A motor carrier may employ a driver who is not a regularly employed driver of that motor carrier without complying with the rules in this part with respect to the driver if—

(1) The driver is a regularly employed driver of another motor carrier;

(2) The motor carrier that regularly employs the driver furnishes a certificate that the driver is fully qualified to drive a motor vehicle under the rules in this part; and

(3) The motor carrier that uses the driver has in its files a copy of the driver's medical examiner's certificate.

(b) A motor carrier that obtains a certificate in accordance with paragraph (a)(2) of this section shall retain that certificate and the copy of the driver's medical examiner's certificate in its files for 3 years.

8

AMENDMENTS

Part 391—Qualifications of Drivers
Drivers of Light-Weight Farm Vehicles

The American Farm Bureau Federation, the National Council of Farmer Cooperatives, and certain other individuals and groups

representing farmers have filed petitions, asking the Director of the Bureau of Motor Carrier Safety to suspend the application of the provisions of Part 391 of the Motor Carrier Safety Regulations insofar as those provisions apply to drivers of motor vehicles operated on behalf of farmers. Upon consideration of those petitions, the Director has concluded that, while some relief is warranted, it would not be in the interest of safety to provide an indefinite suspension of the rules or to exempt drivers of the larger, and inherently more dangerous, motor vehicles. Therefore, he is granting a 6-month suspension of certain of the driver qualification rules applicable solely to drivers of light-weight vehicles used to transport farm produce from a farm or supplies to a farm. The temporary exemption is limited to rules which would otherwise first apply to farm vehicle drivers on January 1, 1971. However, no exemption is being granted with respect to any requirement that applied to farm vehicle drivers prior to that date, since there appears to be no hardship resulting from continuing the effectiveness of those provisions.

Since this amendment relieves a restriction and imposes no additional burden upon any person, notice and public procedure are unnecessary, and it is effective on January 1, 1971.

(Sec. 204, Interstate Commerce Act, 49 U.S.C. 304, sec. 6, Department of Transportation Act, 49 U.S.C. 1655; delegations of authority at 49 CFR 1.48 and 49 CFR 389.4)

Issued on December 31, 1970.

Robert A. Kaye,
Director,
Bureau of Motor Carrier Safety.

I. The introductory clause of § 391.11 (b) is amended to read as follows:

§ 391.11 Qualifications of drivers.

* * * * * * *

(b) Except as provided in §§ 391.61 and 391.67, a person is qualified to drive a motor vehicle if he——

* * * * * * *

II. Paragraph (a) of § 391.31 is amended to read as follows:

§ 391.31 Road test.

(a) Except as provided in §§ 391.33, 391.61, and 391.67, a person shall not drive a motor vehicle unless he has first successfully completed a road test and has been issued a certificate of driver's road test in accordance with this section.

* * * * * * *

III. Paragraph (a) of § 391.35 is amended to read as follows:

§ 391.35 Written examination.

(a) Except as provided in §§ 391.37, 391.61, and 391.67, a person shall not drive a motor vehicle unless he has first taken a written examination and has been issued a certificate of written examination in accordance with this section.

* * * * * * *

IV. Paragraph (a) of § 391.41 is amended to read as follows:

§ 391.41 Physical qualifications for drivers.

(a) A person shall not drive a motor vehicle unless he is physically qualified to do so and, except as provided in § 391.-67, has on his person the original, or a photographic copy, of

a medical examiner's certificate that he is physically qualified to drive a motor vehicle.

* * * * * * *

V. The introductory clause of § 391.45 is amended to read as follows:

§ 391.45 Persons who must be medically examined and certified.

Except as provided in § 391.67, the following persons must be medically examined and certified in accordance with § 391.-43 as physically qualified to drive a motor vehicle:

VI. Subpart G is amended by adding a new § 391.67 at the end of the subpart, reading as follows:

§ 391.67 Farm vehicle drivers.

(a) Before July 1, 1971, the following rules do not apply to a farm vehicle driver as defined in paragraph (b) of this section.

(1) Section 391.11(b)(1) (relating to minimum age of drivers).

(2) Subpart C (relating to disclosure of, investigation into, and inquires about, the background character, and driving record of drivers).

3) Section 391.31 (relating to road tests).

(4) Section 391.35 (relating to written examinations).

(5) So much of § 391.45(a) as requires a driver to have a medical examiner's certificate, or a copy of the certificate, on his person.

(6) Section 391.45 (relating to medical examinations).

(b) A "farm vehicle driver" is a person who is at least 18 years old and who is driving a vehicle that——

(1) Is controlled and operated by a farmer;

(2) Is being used to transport the produce of that farmer's farm from the farm or is being used to transport supplies to that farmer's farm for use at the farm;

(3) Has a gross weight, including its load, of 10,000 pounds or less; and

(4) Is not being used in the operations of a for-hire carrier.

VII. The table of contents is amended by adding the following at the end of the table:

Sec.

391.67 Farm vehicle drivers.

[F.R. Doc. 71-179; Filed, Jan. 6, 1971; 8:46 a.m.]

9

Miscellaneous Amendments

The purpose of this issuance is to make nonsubstantive editorial and conforming amendments to rules in Parts 391 and 392 of, and in Appendix C to, the Motor Carrier Safety Regulations. These rules were issued in a single proceeding arising out of Docket No. MC-7 (35 F.R. 6458). The Director is making the changes to eliminate instances of inconsistent language in provisions dealing with the same subject matter, and to correct misspellings and a misprint.

Since these amendments do not affect the substance of the rules, notice and public procedure thereon are unnecessary, and they are effective on the date of issue set forth below.

In consideration of the foregoing, Subchapter B in Chapter III of Title 49, CFR is amended as set forth below.

(Sec. 204, Interstate Commerce Act, as amended, 49 U.S.C. 304, sec. 6, Department of Transportation Act, 49 U.S.C. 1655; and the delegations of authority at 49 CFR §§ 1.48 and 389.4)

Issued on April 29, 1971.

Kenneth L. Pierson,
Acting Director,
Bureau of Motor Carrier Safety.

§ 391.43 [Amended]

I. The instructions for performing and recording physical examinations following § 391.43(c) of Part 391 are amended as follows:

A. In the fifth paragraph beginning Head-eyes, the word "spectacles" is amended to read "lenses" and the reference to aphacic drivers is delated. As so amended, the paragraph reads as follows:

Head-eyes. When other than the Snellen chart is used, the results of such test must be expressed in values comparable to the standard Snellen test. If the applicant wears corrective lenses, these should be worn while applicant's visual acuity is being tested. If appropriate, indicate on the Medical Examiner's Certificate by checking the box, "Qualified only when wearing corrective lenses." In recording distance vision use 20 feet as normal. Report all vision as a fraction with 20 as numerator and the smallest type read at 20 feet as denominator. Note ptosis, discharge, visual fields, ocular muscle imbalance, color blindness, corneal scar, exophtalmos, or strabismus, uncorrected by corrective lenses. Monocular drivers are not qualified to operate commercial motor vehicles under existing Motor Carrier Safety Regu-

lations. If the driver habitually wears contact lenses, or intends to do so while driving there should be sufficient evidence to indicate that he has good tolerance and is well adapted to their use. The use of contact lenses should be noted on the record.

B. In the 16th paragraph beginning Neurological, the word "Rhomberg" is amended to read "Romberg."

C. In the form for recording the physical examination, under the heading "Reflexes," the word "Rhomberg" is amended to read "Romberg."

II. § 391.65(b) of Part 391 is amended to read as follows:

§ 391.65 . Drivers furnished by other motor carriers.

* * * * * * *

(b) A motor carrier that obtains a certificate in accordance with paragraph (a)(2) of this section shall retain a copy of that certificate and a copy of the driver's medical examination certificate in its files for 3 years.

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Appendix C—Questions for Written Examination

As required in § 391.35, the written examination shall consist of at least 30 questions, and they shall be chosen in such manner as to test the examinee's knowledge of Parts 390-397 of the Motor Carrier Safety Regulations.

Questions shall be taken from those formulated below and reproduced in such form and manner as to be answered, True or False. Each question is preceded by the application section of the Motor Carrier Safety Regulations and the correct answer in parentheses.

Sections	Questions
391.1(b)..... (True)	A motor carrier may require drivers to meet additional or more stringent requirements than those in the Federal regulations.
391.1(c)..... (True)	A motor carrier who employs himself as a driver must comply with both the rules in this part that apply to motor carriers and the rules in this part that apply to drivers.
391.11(b)(1)... (True)	A driver engaged in over-the-road interstate transportation must be at least 21 years of age.
391.11(b)(2)... (True)	A driver must be able to understand highway traffic signs in the English language.
391.15(b)(2)... (False)	Under the Motor Carrier Safety Regulations, a driver's traffic record does not affect his qualification to drive in interstate commerce.
391.15(b)(2)... (False)	A driver may drive a commercial vehicle in interstate commerce if his State operator's license has been suspended.
391.41(a)..... (True)	A driver required to have a physical examination must carry on his person the Medical Examiner's Certificate or a photographically reproduced copy of the certificate whenever he is on duty.
391.41(b)(3)... (True)	A person who has diabetes and must take insulin for its control is not qualified to drive a commercial vehicle.
391.41(b)(10).. (False)	A driver who is color blind as to red, green, and amber is qualified to drive.

391.41(b)(10).. (True)	A driver is qualified even though he must wear spectacles to meet minimum vision requirements.
391.41(b)(11).. (False)	A driver is qualified even though he needs to use a hearing aid to meet the minimum hearing level.
391.41(12).... (True)	A driver may not be addicted to or use narcotics or habit-forming drugs.
391.45(b)..... (True)	A driver must be physically examined at least every 24 months.
391.45(c)..... (True)	If a driver suffers a physical or mental injury or impairment which could affect his ability to perform normal duties, he must undergo a new physical examination and recertification before returning to driving.
392.1..... (True)	A driver must be familiar with the rules set forth in the Motor Carrier Safety Regulations.
392.2..... (False)	A driver may exceed the posted speed limit if he is late and must make a scheduled arrival.
392.2..... (False)	A driver operating in interstate commerce is required to comply with only Federal regulations, not State laws.
392.3..... (False)	A driver may continue to drive if he is ill or fatigued in order to complete his run.
392.5(a)(2)... (False)	A driver may drink an alcoholic beverage while on duty.
392.9..... (True)	No motor vehicle shall be driven unless the driver assures himself that the emergency

equipment (fire extinguishers, flares, flags, etc.) is in place and ready for use.

392.9(a)..... (True) A driver may not drive if the load or other objects obscure his view or interfere with his driving.

392.9(c)..... (True) If the emergency equipment or exit from the cab is blocked by a person, cargo, or other objects, the driver may not operate the unit.

392.9(e)..... (False) A driver of a bus transporting passengers need not be concerned with the loading of baggage, miscellaneous express or freight aboard the vehicle.

392.10..... (False) All commercial motor vehicles must stop at railroad crossings.

392.11..... (True) The driver of a vehicle approaching a railroad crossing who is not required to stop, should slow down so that he can stop in the event of danger before he reaches the rails and should proceed only if it is safe to cross.

392.15(e)..... (True) Drivers shall not use turn signals as "do pass," or "okay to pass" for vehicles approaching from the rear.

392.21..... (False) There are no regulations for parking of trucks in the Motor Carriers Safety Regulations.

392.22(c)(1)(2). (True) If your vehicle becomes disabled, an emergency signal must be placed at a minimum of 100 feet to the front, another 10 feet from the rear, and a third 100 feet to the rear of the disabled vehicle on a straight and level road.

392.25..... (False) Flame-producing emergency signals may be carried on motor vehicles transporting explosives.

392.33..... (True) A motor vehicle may not be driven if any of the required lights or reflectors are obscured by dirt or part of the load.

392.40(e)..... (True) A driver must report all details of an accident in which he is involved, to the motor carrier employing him, regardless of the amount of property damage.

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Appendix C—Questions for Written Examination —Continued

Sections	Questions
392.41..... (True)	After his vehicle strikes a parked vehicle, a driver must stop immediately and attempt to locate the owner of the parked vehicle.
392.41..... (False)	If, after striking a parked vehicle, the driver has been unable to find the owner or operator, he can leave the scene without taking any further action.
392.42..... (True)	If a driver receives a notice that his license, permit or privilege to operate a motor vehicle has been revoked, suspended, or withdrawn, he must notify the carrier that employs him before the end of the following business day.
392.50(b)..... (False)	A driver may smoke in the vicinity of his vecle while it is being fueled.
392.60..... (False)	There are no restrictions in the Motor Carrier Safety Regulations preventing a driver from

transporting passengers on a vehicle other than a bus.

392.62 (True) — No driver, while driving a bus, may engage in any unnecessary conversation or other activities tending to distract his attention from the operation of the bus.

392.65 (True) — If there is direct access between the sleeper berth and cab, a driver does not have to stop the vehicle when the codriver enters or leaves the sleeper berth.

392.68 (False) — A driver may disengage the gears while going down a slight grade in order to pick up speed.

393.1 (True) — The regulations prohibit driving a motor vehicle if certain of its parts and accessories are not in working order.

393.12(a) (True) — All buses and trucks over 80 inches wide must have three identification lamps mounted on the vertical centerline.

393.18(b) (False) — During hours of darkness, loads projecting beyond the sides and over 4 feet beyond the rear of a motor vehicle must be marked by red flags only.

393.32 (True) — Detachable connections cannot be made by twisting together wires from the towed and towing units.

393.41(a) (True) — Parking brakes must be adequate to hold the vehicle on any grade on which it is operated.

393.42(c) (False) — Truck-tractors having only two axles need not have brakes on the front wheels.

393.43(d) (True) — Trailer brakes must automatically apply when the trailer "breaks loose" from the tractor.

393.60(c) (False) — Labels and stickers required by law may be affixed at the top of motor vehicle windshields.

393.65(e)(1) (True) — The filling opening of every fuel tank must be covered by a secure cap or similar device.

393.70(f)(5) (True) — Full trailers and converter dollies must have safety chains in addition to the tow bar, attaching them to the towing vehicle.

393.77(a)(6) (False) — Portable heaters may be used in the cabs of motor vehicles.

393.80 (False) — Only one rear vision mirror is required on all motor vehicles.

393.82 (True) — All vehicles must be equipped with a speedometer, except driveway-towaway operations.

393.95(a) (True) — All vehicles must be equipped with fire extinguishers.

393.95(d) (True) — Tire chains must be carried when a driver is likely to encounter conditions requiring their use.

393.95(f)(3) (True) — Three red emergency reflectors and two red flags provide adequate warning devices for a stopped or disabled vehicle.

393.96(c) (False) — First aid kits are required on all motor vehicles.

395.1 (True) — Drivers shall be familiar with the rules governing the hours-of-service limitations.

395.1(a)(1) (False) — If a dispatcher notifies you that your truck will not be ready for an hour but that you must stand by until it is ready, your time waiting for the truck is logged as off-duty.

395.2(a)(True) — Meal stops and coffee breaks taken while a driver is enroute to a destination shall be logged as "on-duty" time.

395.2(a)(1)(False) — A driver awaiting dispatch at a carrier's terminal may show his time as off-duty time.

395.2(a)(2)(False) — Time spent inspecting or servicing your vehicle is off-duty time.

395.2(a)(4)(True) — In a two-man operation using a conventional cab truck or tractor not equipped with a sleeper berth, time spent by each occupant riding but not driving would be logged as on-duty time.

395.2(a)(5)(False) — Time spent loading or unloading a vehicle may be logged as off-duty time.

395.2(a)(7)(True) — Time spent at the scene of a breakdown, or repairing a disabled vehicle must be logged as on-duty time.

395.2(g)(False) — A driver may use the seat of his vehicle as a sleeper berth and log his time in it as sleeper berth time.

395.3(a)(False) — A driver may drive after having been on duty for 15 hours.

395.3(a)(True) — Off-duty time may be spent resting in a sleeper berth in two periods, neither of which is less than 2 hours.

395.3(a)(False) — Local drivers are not subject to the hours-of-service regulations.

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Appendix C—Questions for Written Examination—Continued

Sections	Questions
395.3(b)(True)	A driver may not be on duty more than 60 hours in any period of 7 consecutive days, or 70 hours in any 8 consecutive days in the case of a carrier who operates every day of the week.
395.8(a)(True)	Drivers are required to make true and accurate entries on their logs.
395.8(a)(True)	Failure to make logs when required or making false entries on the logs, make both the driver and the carrier liable to prosecution.
395.8(a)(True)	A driver is accountable for each entry he makes on his daily log even when he makes entries under company instructions.
395.8(b)(True)	A driver's logs must be kept current to the time of his last change of duty status.
395.8(c)(True)	A driver must make out his logs in his own handwriting.
395.8(r)(False)	A driver may wait until the end of a trip to make out his logs even if the trip takes 2 or more days.
395.8(r)(True)	When drivers' logs are required, the driver must forward the original of his log to the carrier each day.
395.8(s)(False)	A driver must retain a duplicate copy of each daily log for 30 days in his files at home.
395.8(t)(True)	If all of your driving is wholly within a 50-mile radius of your home terminal and the carrier

keeps required records you do not have to keep a daily log.

395.13..... (True) If a driver is stopped during a road check and is found to be in violation of the on-duty or driving time rules, he may be placed "out of service" at that point.

396.4..... (False) If a motor vehicle, being operated on a highway, is discovered to be in an unsafe condition, likely to be hazardous or to result in a breakdown, the driver may continue to operate it to the carrier's terminal or shop facility, if the terminal or shop is within 200 miles.

396.4..... (False) A driver may drive a motor vehicle, which by reason of its mechanical condition is so imminently hazardous as to be likely to cause an accident or breakdown, if he has reported the vehicle's condition to his supervisor.

396.5(a)..... (True) Certain representatives of the Bureau of Motor Carrier Safety are authorized to inspect vehicles and cargo of motor carriers in operation.

395.5(c)(1)..... (True) Representatives of the Bureau of Motor Carrier Safety may declare a motor vehicle "out of service" if, by reason of its mechanical condition or loading, it is so imminently hazardous as to be likely to cause an accident or a breakdown.

396.5(c)(2)..... (False) Vehicles that have been marked "out of service" may be operated before necessary repairs have been made.

396.5(c)(4)..... (True) Only the person who makes the repairs may certify that the repairs required by an out-of-service notice have been completed.

396.5(c)(4)..... (True) The Motor Carrier Safety Regulations allow drivers to make repairs to their vehicles if assistance is not readily available.

396.6..... (True) Motor vehicles damaged in an accident may not be driven until a qualified inspector determines that they are in safe operating condition.

396.7..... (True) Drivers are required to prepare written daily vehicle condition reports.

396.7..... (False) A written vehicle condition report need not be prepared by a driver who informs his shop steward of all defects or deficiencies of the motor vehicle within two hours after returning to the terminal or shop facility.

397.01(b)..... (False) The rules in Part 397, Transportation of Hazardous Materials; Driving and Parking Rules, do not apply to over-the-road drivers (interstate), only to city deliveries.

397.02..... (False) Motor carriers are not required to instruct their employees about the hazardous materials regulations.

397.1(b)..... (True) Motor vehicles transporting Class A or Class B explosives must be attended at all times.

397.1(c)..... (False) Motor vehicles transporting dangerous articles other than explosives may never be left unattended upon any public street or highway.

397.1(d)..... (True) Motor vehicles transporting explosives and other dangerous articles must, when practicable, avoid congested places.

397.1(e)..... (False) Motor vehicles may be fueled at any time when transporting any type of hazardous material.

397.1(g).....Smoking is permitted on any motor vehicle (False) transporting hazardous materials.

177.817(c).....When transporting dangerous articles, a driver (True) must have in his possession a shipping paper which shows the proper name and classification of the article in transit.

177.823(a)(3)...When required, hazardous material placards (True) must be on both sides, front and rear of the vehicle.

177.823(b)(1)...A tank vehicle used exclusively for transporting (True) gasoline or other flammable liquids must be marked or placarded, whether it is loaded or empty.

177.823(d).....All hazardous material placards must be re- (True) moved from a van-type trailer after a hazardous commodity is unloaded from the trailer.

[F.R. Doc. 70-4868; Filed, Apr. 21, 1970; 8:45 a.m.]

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2. PLAINTIFF'S EXHIBIT 225

Percent of "White", "Negro" and "Other" Population in the Standard Metropolitan Statistical Area and the City at T.I.M.E. D.C.'s Terminal Locations, and the "White", "Negro" and "Other" Work Force at T.I.M.E. D.C.'s Terminals

Terminal City	SMSA			City			T.I.M.E. D.C.		
	White	Negro	Other	White	Negro	Other	White	Negro	Other
Albany	96.31	3.28	.41	87.00	12.31	.69	96.97	0	3.03
Atlanta	77.41	22.35	.24	48.40	51.31	.29	85.63	13.17	1.20
Baltimore	75.78	23.67	.55	52.98	46.39	.63	87.50	10.00	2.50
Boston	94.52	4.61	.87	81.85	16.33	1.82	98.28	0	1.72
Buffalo	91.22	8.06	.72	78.74	20.38	.88	100.00	0	0
Chattanooga	83.48	16.37	.17	63.72	36.06	.22	92.96	7.04	0
Chicago	81.28	17.64	1.08	65.57	32.75	1.68	93.84	3.32	2.84
Cincinnati	88.73	11.00	.27	71.91	27.64	.45	93.48	6.52	0
Cleveland	83.41	16.11	.48	61.01	38.33	.66	97.14	2.86	0
Dallas	83.23	15.98	.79	74.15	24.91	.94	85.32	13.76	.92
Decatur	—	—	—	86.90	13.00	.10	100.00	0	0
Denver	94.55	4.08	1.37	89.02	9.13	1.85	90.87	5.39	3.74
Detroit	81.42	18.03	.55	55.50	43.69	.81	98.11	1.89	0
El Paso	95.82	3.08	1.10	96.38	2.58	1.04	39.39	0	60.61
Evansville	94.02	5.82	.16	92.52	7.28	.20	97.83	2.17	0
Fountain	—	—	—	—	—	—	91.67	0	8.33
Hobbs	—	—	—	90.64	7.88	1.48	100.00	0	0
Kansas City	87.40	12.05	.55	77.20	22.09	.71	96.12	.97	2.91
Knoxville	92.57	7.17	.26	86.87	12.79	.32	96.36	3.64	0
Little Rock	80.77	18.98	.25	74.48	25.28	.24	94.12	5.88	0

Terminal City	SMSA White	SMSA Negro	SMSA Other	City White	City Negro	City Other	T.I.M.E. D.C. White	T.I.M.E. D.C. Negro	T.I.M.E. D.C. Other
Los Angeles (1)	85.42	10.84	3.74	77.19	17.88	4.93	77.89	9.88	12.23
Los Angeles (2)	85.42	10.84	3.74	77.19	17.88	4.93	80.08	4.30	15.62
Louisville	87.54	12.25	.21	75.94	23.80	.26	100.00	0	0
Lubbock	91.72	7.60	.68	91.83	7.50	.67	95.77	2.82	1.41
General Office	91.72	7.60	.68	91.83	7.50	.67	95.16	2.42	2.42
Memphis	62.16	37.52	.32	60.82	38.89	.29	87.31	12.69	0
Milwaukee	91.76	7.59	.65	84.42	14.65	.93	100.00	0	0
Montreal	—	—	—	—	—	—	100.00	0	0
Nashville	81.91	17.82	.27	80.08	19.62	.30	92.78	7.22	0
New York City (1)	81.96	16.33	1.71	76.56	21.18	2.26	97.67	.78	1.55
New York City (2)	81.96	16.33	1.71	76.56	21.18	2.26	95.95	2.70	1.35
Oklahoma City	89.10	8.50	2.40	83.94	13.69	2.37	94.50	3.30	2.20
Paris	—	—	—	—	—	—	97.50	2.50	0
Philadelphia	81.88	17.52	.60	65.62	33.55	.83	97.30	2.70	0
Phoenix	94.51	3.40	2.09	93.28	4.80	1.92	89.56	3.48	6.96
Portland	96.21	2.31	1.48	92.16	5.64	2.20	97.78	.89	1.33
Ripley	—	—	—	—	—	—	100.00	0	0
Rochester	92.96	6.54	.50	82.41	16.76	.83	100.00	0	0
Sacramento	90.96	4.74	4.30	81.50	10.71	7.79	89.47	0	10.53
Sallisaw	—	—	—	—	—	—	100.00	0	0
San Antonio	91.98	6.93	1.09	91.37	7.65	.98	35.30	5.88	58.82
San Francisco	82.80	10.62	6.58	71.43	13.42	15.15	81.52	4.74	13.74

Terminal City	SMSA White	SMSA Negro	SMSA Other	City White	City Negro	City Other	T.I.M.E. D.C. White	T.I.M.E. D.C. Negro	T.I.M.E. D.C. Other
Seattle	94.03	2.93	3.04	87.39	7.13	5.48	96.36	1.04	2.60
Springfield	98.11	1.58	.31	97.67	1.98	.35	100.00	0	0
Stockton	88.08	5.44	6.48	79.52	10.98	9.50	100.00	0	0
Syracuse	95.61	3.68	.71	88.04	10.84	1.12	100.00	0	0
St. Louis	83.59	16.03	.38	58.66	40.85	.49	97.87	2.13	0
Tacoma	93.04	4.50	2.46	90.76	6.75	2.49	100.00	0	0
Toledo	91.35	8.25	.40	85.73	13.79	.48	100.00	0	0
Toronto	—	—	—	—	—	—	100.00	0	0
Tucson	93.63	2.94	3.43	94.82	3.49	1.69	80.00	10.00	10.00
Tulsa	88.28	8.25	3.47	86.55	10.64	2.81	93.34	3.33	3.33
Vancouver	—	—	—	—	—	—	100.00	0	0
Vinita	—	—	—	—	—	—	81.82	0	18.18
Wash., D.C.	74.26	24.61	1.13	27.66	71.08	1.26	100.00	0	0
Winchester	—	—	—	90.94	8.93	.13	96.70	.94	2.36
Yreka	—	—	—	—	—	—	100.00	0	0
York	97.41	2.37	.22	86.53	12.96	.51	100.00	0	0

SMSA (Standard Metropolitan Statistical Area) percentages are based on the 1970 U.S. Census of Population Reports. The terminal cities with dashes in the SMSA columns have no metropolitan area figures available from the Census Bureau.

City percentages are based on the 1970 U. S. Census of Population Reports of urban places with a population of more than 10,000. Population figures for cities with populations of under 10,000 are not available from the Census Bureau at this time and therefore dashes are indicates in these columns.

Population figures for Canadian cities are not included on the chart.

T.I.M.E. D.C. employment figures are based on the total terminal employment. The percentages are computed from the March 31, 1971 printout "Personnel List," furnished plaintiff by T.I.M.E. D.C., Inc., Lubbock, Texas.

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3. **Plaintiff's Exhibit 231**

AVERAGE TOTAL EARNINGS OF CITY DRIVERS AND LINE DRIVERS—1969 FOR TEN T.I.M.E.-D.C., INC. TERMINALS

Earnings Record 1969*

Terminal City	City Drivers	Road Drivers	Difference
Atlanta	$ 8400.72	$13,178.78	$4778.06
Chicago	$10739.44	$14,927.76	$4188.32
Dallas	$ 7973.80	$12,542.46	$4568.66
Denver	$ 8819.49	$11,392.10	$2572.61
Los Angeles (1)	$10655.03	$13,426.84	$2771.81
Los Angeles (2)	$ 9572.46	$10,960.71	$1388.25
Memphis	$ 8442.35	$11,874.33	$3431.98
Nashville	$ 8020.27	$11,559.37	$3539.10
Oklahoma City	$ 8716.77	$14,529.37	$5812.60
San Francisco	$11039.21	$12,356.53	$1317.32

*Source: Printout furnished by T.I.M.E. D.C., Inc. "Earnings for City Drivers and Line Drivers, 1969", which does not include the earnings of those drivers making less than $3000/yr.

cmm. 9/24/71

E. DEFENDANTS' EXHIBITS

1. Defendants' Exhibit TT

PERCENTAGE AND ABSOLUTE INCREASE (DECREASE) IN TOTAL EMPLOYMENT AND MINORITY GROUP EMPLOYMENT
T.I.M.E.-DC, INC.
1967 THROUGH 1972

Table I

Percentage of increase (decrease) in Total Employment and Minority Group Employment

T.I.M.E.-DC, INC.
1967 through 1972

Year	Total All Employees	Percent of Increase (Decrease)
1967	7,238	
1968	7,152	
1969	6,981	
1970	6,534	
1971	6,468	
1972	6,424	(11.2%)

Year	Total All Minorities	Percent of Increase (Decrease)
1967	512	
1968	534	
1969	581	
1970	579	
1971	621	
1972	677	
1972	677	32.2%

Year	Total Negro	Percent of Increase (Decrease)
1967	245	
1968	263	
1969	300	
1970	292	
1971	310	
1972	356	45.3%

Year	Total Spanish Surnamed	Percent of Increase (Decrease)
1967	227	
1968	230	
1969	230	
1970	237	
1971	257	
1972	265	16.7%

Source: Equal Employment Opportunity Employer Information Report EEO-1
1967 and 1968 reports of:
T.I.M.E. Freight, Inc.
LASME, Inc.
DC International

1969, 1970, 1971, and 1972 reports of:
T.I.M.E.-DC, Inc.

(all on file at Company General Offices, Lubbock, Texas)

Table I-A

Absolute increase (decrease) in Total Employment and Minority Group Employment

T.I.M.E.-DC, INC.
1967 through 1972

Year	Total All Employees	Absolute Increase (Decrease)
1967	7,238	
1968	7,152	
1969	6,981	
1970	6,534	
1971	6,468	
1972	6,424	(814)

Year	Total All Minorities	Absolute Increase (Decrease)
1967	512	
1968	534	
1969	581	
1970	579	
1971	621	
1972	677	165

Year	Total Negro	Absolute Increase (Decrease)
1967	245	
1968	263	
1969	300	
1970	292	
1971	310	
1972	356	111

Total Absolute

Year	Spanish Surnamed	Increase (Decrease)
1967	227	
1968	230	
1969	230	
1970	237	
1971	257	
1972	265	38

Source: Equal Employment Opportunity Employer Information Report EEO-1

1967 and 1968 reports of:

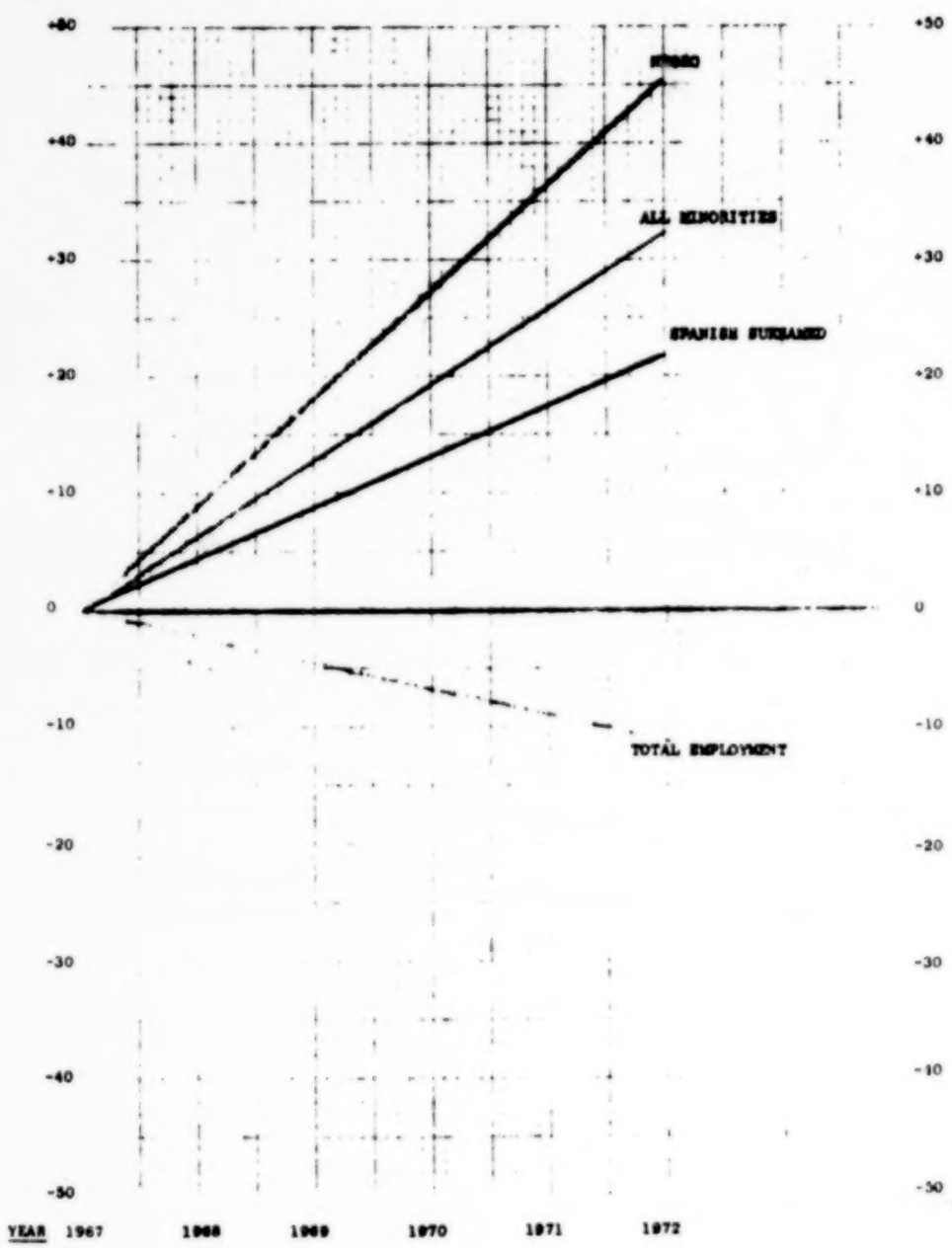
T.I.M.E. Freight, Inc.
LASME, Inc.
DC International

1969, 1970, 1971, and 1972 reports of:
T.I.M.E.-DC, Inc.

(all on file at Company General Offices, Lubbock, Texas)

CHART 1

Percentage of increase (decrease) in total employment and minority group employment - T.I.M.E.-DC, INC. 1967 through 1972

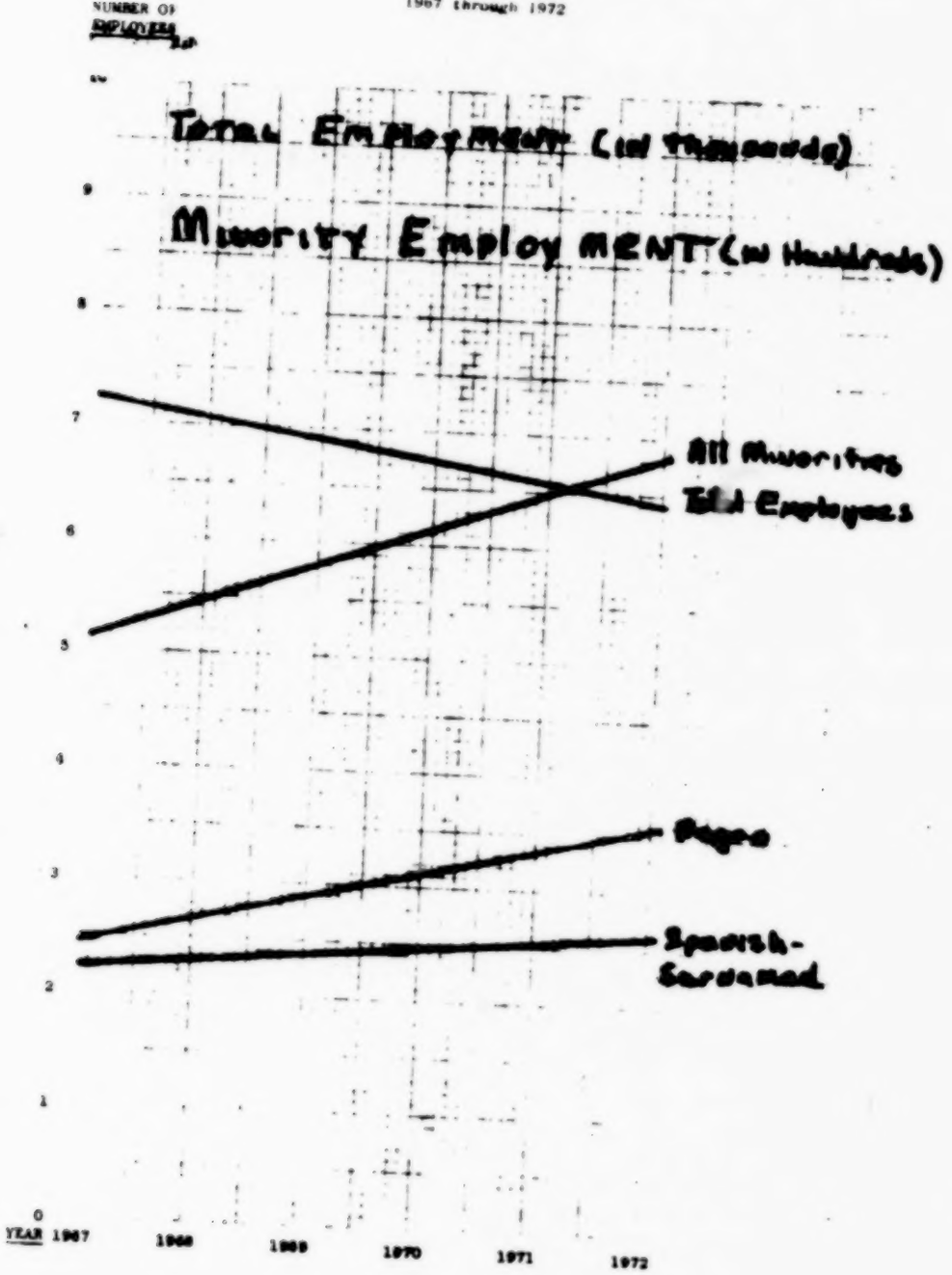


Source: Table 1

CHART I-A

Absolute increase (decrease) in total employment and minority group employment

T.I.M.E.-DC, INC.
1967 through 1972



Source: Table I-A

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2. Defendants' Exhibit UU

PERCENTAGE AND ABSOLUTE INCREASE (DECREASE) IN TOTAL AND MINORITY GROUP EMPLOYMENT TEN SELECTED TERMINAL LOCATIONS WHERE DEPOSITIONS HAVE BEEN TAKEN BY PLAINTIFF IN THE PRESENT PROCEEDING
T.I.M.E.-DC, INC.
1967 THROUGH 1972

Table VII

Percentage of Increase (Decrease) in Total and Minority Group Employment in Ten Selected Terminal Locations Where Depositions Have Been Taken by Plaintiff in the Present Proceeding

T.I.M.E.-DC, INC.
1967 through 1972

Year	Total All Employees	Percent of Increase (Decrease)
1967	3,993	
1972	3,515	(12.0%)

Year	Total All Minorities	Percent of Increase (Decrease)
1967	424	
1972	508	20.6%

Year	Total Negro	Percent of Increase (Decrease)
1967	221	
1972	284	28.5%

Year	Total Spanish Surnamed	Percent of Increase (Decrease)
1967	178	
1972	192	7.9%

Source: Equal Employment Opportunity Employer Information Report EEO-1
1967 and 1968 reports of:
T.I.M.E. Freight, Inc.
LASME, Inc.
DC International

1969, 1970, 1971, and 1972 reports of:
T.I.M.E.-DC, Inc.

(all on file at Company General Offices, Lubbock, Texas)

Table VII-A

Absolute Increase (Decrease) in Total Employment and Minority Group Employment in Ten Selected Terminal Locations Where Depositions Have Been Taken by Plaintiff in the Present Proceeding

T.I.M.E.-DC, INC.
1967 through 1972

Year	Total All Employees	Absolute Increase (Decrease)
1967	3,993	
1972	3,515	(478)

Year	Total All Minorities	Absolute Increase (Decrease)
1967	424	
1972	508	84

Year	Total Negro	Absolute Increase (Decrease)
1967	221	
1972	284	63

Year	Total Spanish Surnamed	Absolute Increase (Decrease)
1967	178	
1972	192	14

Source: Equal Employment Opportunity Employer Information Report EEO-1
1967 and 1968 reports of:
T.I.M.E. Freight, Inc.
LASME, Inc.
DC International

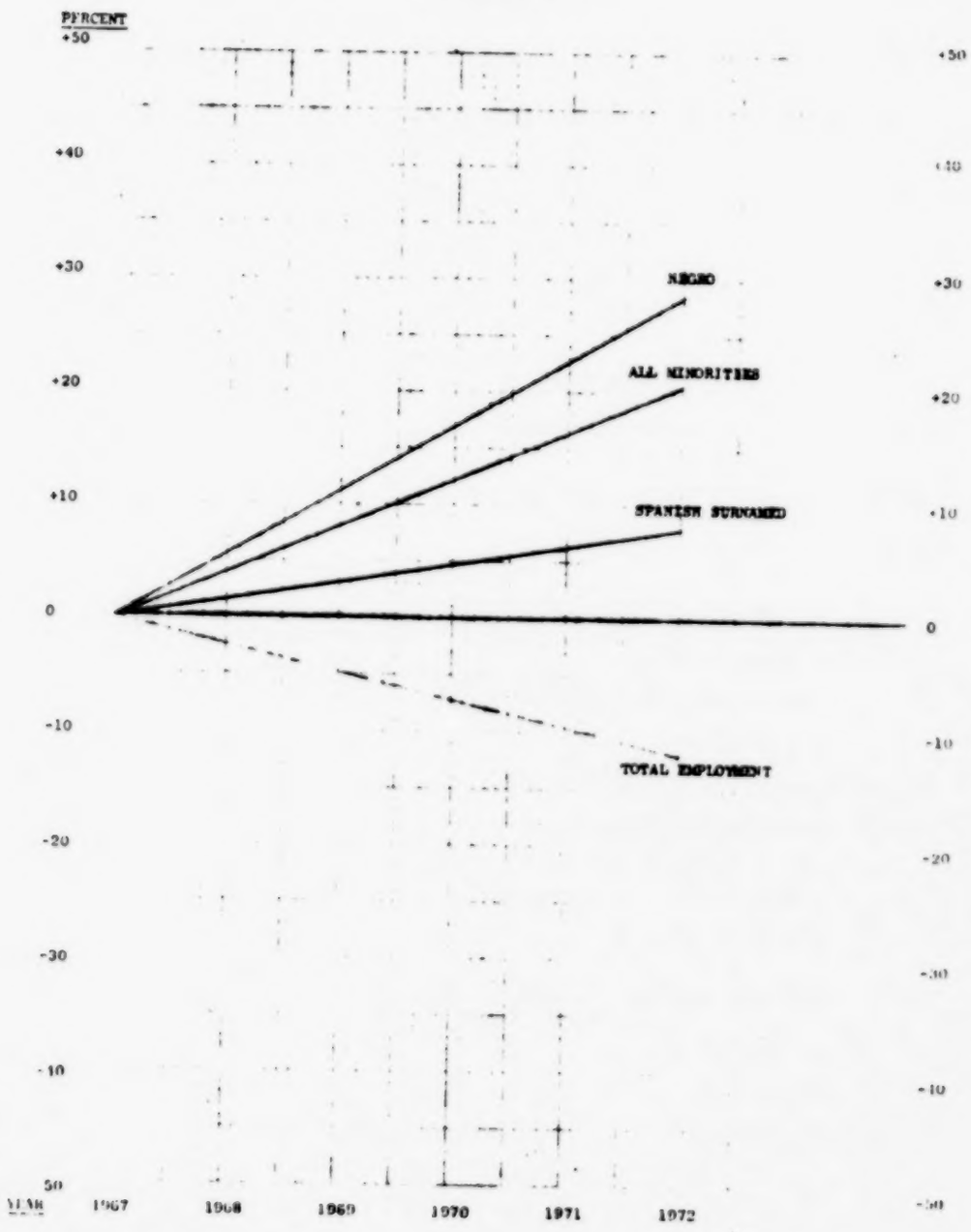
1969, 1970, 1971, and 1972 reports of:
T.I.M.E.-DC, Inc.

(all on file at Company General Offices, Lubbock, Texas)

CHART VII

Porcentage Increase (Decrease) in Total and Minority Group Employment
Ten Selected Terminal Locations Where Depositions Have Been Taken
By Plaintiff in the Present Proceeding

T.I.M.E.-DC, INC.
1967 Through 1972

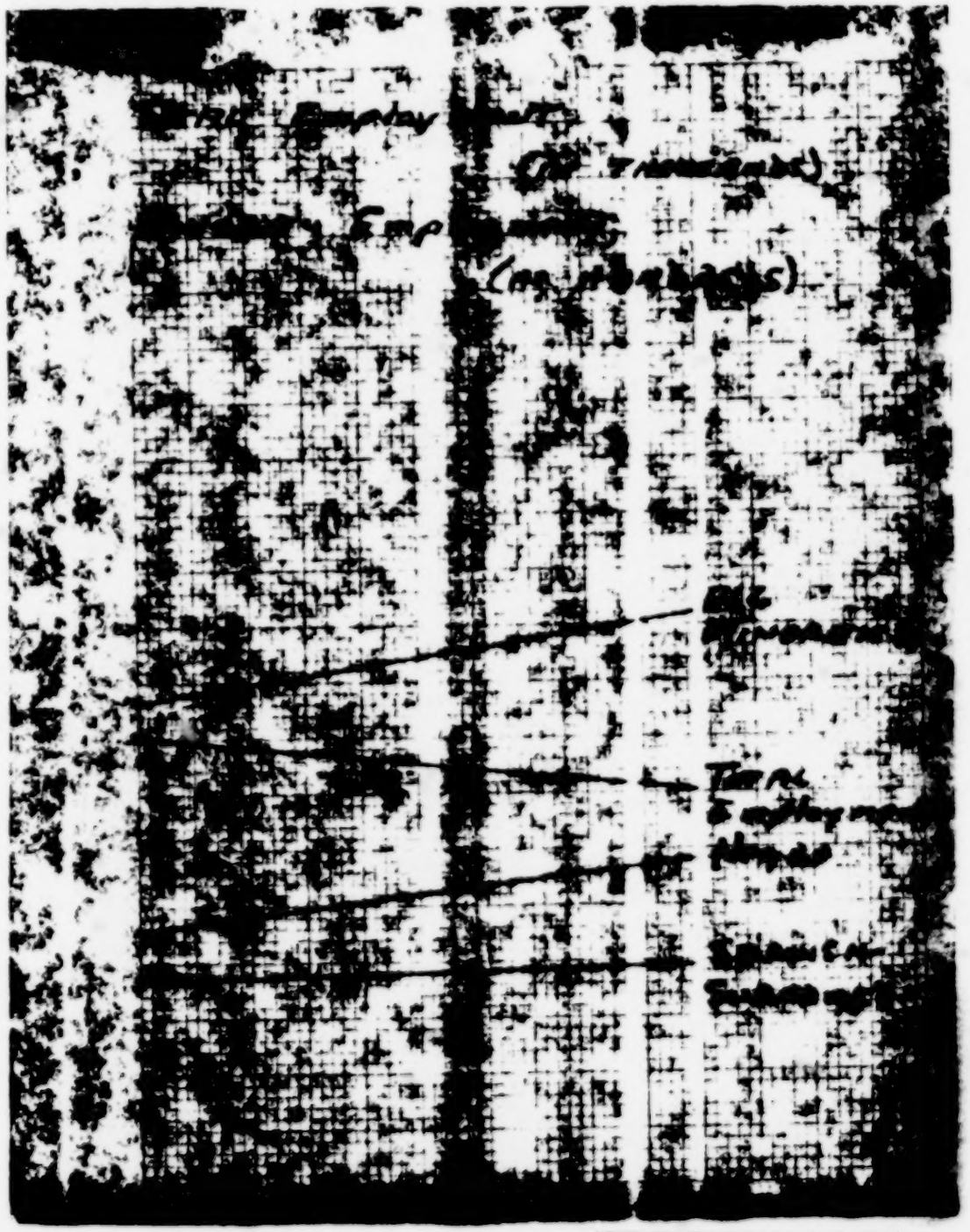


Source: Table VII

CHART VII-A

Absolute Increase (Decrease) in Total and Minority Group Employment in Ten Selected Terminal Locations Where Depositions Have Been Taken by Plaintiff in the Present Proceeding

T.I.M.E.-DC, INC.
1967 Through 1972



Source: Table VII A

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3. DEFENDANT'S EXHIBIT VV

MINORITIES AS A PERCENTAGE OF TOTAL EMPLOYEES AS OF DECEMBER 31, 1971 SYSTEM-WIDE AND FOR THE THREE MAJOR REGIONAL AREAS BY JOB CATEGORY

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

SYSTEM

Minorities as a % of Population		13.3%	4.4%	1.7%	19.4%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	582	4 - 0.7%	7 - 1.2%	6 - 1.0%	17 - 2.9%
Sales	148	1 - 0.7%	2 - 1.4%	0	3 - 2.0%
Office & Clerical	725	19 - 2.6%	32 - 4.4%	8 - 1.1%	59 - 8.1%
Mechanics	332	10 - 3.0%	12 - 3.6%	4 - 1.2%	26 - 7.8%
Servicemen	222	65 - 29.3%	23 - 10.4%	1 - 0.5%	89 - 40.1%
Line Drivers	1,873	23 - 1.2%	7 - 0.4%	12 - 0.6%	42 - 2.2%
City & Dock	2,548	213 - 8.4%	183 - 7.2%	24 - 0.9%	420 - 16.5%
Miscellaneous	30	14 - 46.7%	0	0	14 - 46.7%
TOTAL	6,460	349 - 5.4%	266 - 4.1%	55 - 0.9%	670 - 10.4%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

NORTHERN

Minorities as a % of Population					
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	119	0	0	1 - 0.8%	1 - 0.8%
Sales	53	0	0	0	0
Office & Clerical	181	1 - 0.6%	2 - 1.1%	2 - 1.1%	5 - 2.8%
Mechanics	52	0	0	0	0
Servicemen	11	3 - 27.3%	1 - 9.1%	0	1 - 36.2%
Line Drivers	172	1 - 0.6%	0	0	1 - 0.6%
City & Dock	774	19 - 2.5%	12 - 1.6%	3 - 0.4	31 - 4.0%
Miscellaneous	12	6 - 50.0%	0	0	6 - 50.0%
TOTAL	1,374	30 - 2.2%	15 - 1.1%	6 - 0.4%	51 - 3.7%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

SOUTHERN

Minorities as a % of Population					
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	152	0	0	1 - 0.7%	1 - 0.7%
Sales	30	0	0	0	0
Office & Clerical	118	5 - 4.2%	3 - 2.5%	0	8 - 6.7%
Mechanics	126	4 - 3.2%	0	1 - 0.8%	5 - 4.0%
Servicemen	62	21 - 33.9%	3 - 4.8%	0	24 - 38.7%
Line Drivers	704	9 - 1.3%	0	6 - 0.9%	15 - 2.1%
City & Dock	692	96 - 13.9%	11 - 1.6%	1 - 0.1%	108 - 15.6%
Miscellaneous	8	5 - 62.5%	0	0	5 - 62.5%
TOTAL	1,892	140- 7.4%	17 - 0.9%	9 - 0.5%	166 - 8.8%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

WESTERN

Minorities as a % of Population					
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	184	4 - 2.2%	6 - 3.3%	3 - 1.6%	13 - 7.1%
Sales	61	0	2 - 3.3%	0	2 - 3.3%
Office & Clerical	255	4 - 1.6%	15 - 5.9%	6 - 2.4%	25 - 9.8%
Mechanics	154	6 - 3.9%	12 - 7.8%	3 - 2.0%	21 - 13.6%
Servicemen	149	41 - 27.5%	19 - 12.8%	1 - 0.7%	61 - 40.9%
Line Drivers	997	13 - 1.3%	7 - 0.7%	6 - 6.0%	26 - 26.0%
City & Dock	1,082	98 - 90.6%	160 - 14.8%	20 - 1.9%	278 - 25.7%
Miscellaneous	6	2 - 33.3%	0	0	2 - 33.3%
TOTAL	2,888	168- 5.8%	221- 7.7%	39 1.4%	428 - 14.8

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

HAMMOND

Minorities as a % of Population		19.3%	N/A	0.4%	19.7%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	1	0	0	0	0
Sales					
Office & Clerical	4	0	0	0	0
Mechanics					
Servicemen					
Line Drivers					
City & Dock					
Miscellaneous					
TOTAL	5	0	0	0	0

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

LUBBOCK GENERAL OFFICE

Minorities as a % of Population		7.6%	10.9%	0.7%	19.2%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	127	0	1 - 0.8%	1 - 0.8%	2 - 1.6%
Sales	4	1 - 25.0%	0	0	1 - 25.0
Office & Clerical	171	9 - 5.3%	12 - 7.0%	0	21 - 12.3%
Mechanics					
Servicemen					
Line Drivers					
City & Dock					
Miscellaneous	4	1 - 25.0%	0	0	1 - 25.0
TOTAL	306	11 - 3.6%	13 - 4.3%	1 - 0.3%	25 - 8.2%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

4. DEFENDANT'S EXHIBIT WW
MINORITIES AS A PERCENTAGE OF NEW EMPLOYEES HIRED IN 1971 SYSTEM-WIDE AND FOR THE THREE MAJOR REGIONAL AREAS BY JOB CATEGORY

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

1971 NEW HIRES

SYSTEM

Minorities as a % of Population		13.3%	4.4%	1.7%	19.4%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	72	1 - 1.4%	0	2 - 2.7%	3 - 1.1%
Sales	11	0	0	0	0
Office & Clerical	104	11 - 10.2%	8 - 7.4%	2 - 1.9%	21 - 19.4%
Mechanics	25	2 - 8.0%	0	0	2 - 8.0%
Servicemen	5	1 - 20.0%	0	0	1 - 20.0%
Line Drivers	116	14 - 12.1%	2 - 1.7%	1 - 0.9%	17 - 14.7%
City & Dock	140	27 - 19.3%	8 - 5.7%	2 - 1.4%	37 - 26.4%
Miscellaneous	1	0	0	0	0
TOTAL	474	56 - 11.7%	18 - 3.8%	7 - 1.5%	81 - 16.9%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

1971 NEW HIRES

NORTHERN

Minorities as a % of Population					
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	14	0	0	0	0
Sales	3	0	0	0	0
Office & Clerical	8	0	0	1 - 12.5%	1 - 12.5%
Mechanics	2	0	0	0	0
Servicemen	0				
Line Drivers	13	0	0	0	0
City & Dock	33	4 - 12.1%	0	0	4 - 12.1%
Miscellaneous	0				
TOTAL	73	4 - 5.5%	0	1 - 1.2%	5 - 6.7%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

1971 NEW HIRES

SOUTHERN

Minorities as a % of Population					
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	18	0	0	0	0
Sales	4	0	0	0	0
Office & Clerical	11	3 - 27.3%	0	0	3 - 27.3%
Mechanics	11	1 - 9.1%	0	0	1 - 9.1%
Servicemen	2	0	0	0	0
Line Drivers	32	3 - 9.4%	0	1 - 3.2%	4 - 12.5%
City & Dock	41	11 - 26.8%	0	0	11 - 26.8%
Miscellaneous	1	0	0	0	0
TOTAL	120	18 - 15.0%	0	1 - 0.9%	19 - 15.8%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau

2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

1971 NEW HIRES

WESTERN

Minorities as a % of Population					
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	21	1 - 4.8%	0	2 - 9.5%	3 - 14.3%
Sales	4	0	0	0	0
Office & Clerical	9	2 - 22.2%	0	1 - 11.1%	3 - 33.3%
Mechanics	12	1 - 8.3%	0	0	1 - 8.3%
Servicemen	3	1 - 33.3%	0	0	1 - 33.3%
Line Drivers	71	11 - 15.5%	2 - 2.8%	0	13 - 18.3%
City & Dock	66	12 - 18.2%	8 - 12.1%	2 - 3.0%	22 - 33.3%
Miscellaneous	0				
TOTAL	186	28 - 15.1%	10 - 5.4%	5 - 2.7%	13 - 23.1%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau

2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

1971 NEW HIRES

HAMMOND

Minorities as a % of Population		8.6%	N/A	0.1%	8.7%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	2	0	0	0	0
Mechanics					
Servicemen					
Line Drivers					
City & Dock					
Miscellaneous					
TOTAL	2	0	0	0	0

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

1971 NEW HIRES

LUBBOCK GENERAL OFFICE

Minorities as a % of Population		7.6%	10.9%	.7%	19.2%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	19	0	0	0	0
Sales					
Office & Clerical	76	6 - 7.9%	8 - 10.5%	0	14 - 18.4%
Mechanics					
Servicemen					
Line Drivers					
City & Dock					
Miscellaneous					
TOTAL	95	6 - 6.3%	8 - 8.4%	0	14 - 14.7

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

5. DEFENDANT'S EXHIBIT XX

MINORITIES AS A PERCENTAGE OF TOTAL EMPLOYEES USED ON A CASUAL BASIS IN 1971 SYSTEMWIDE AND FOR THE THREE MAJOR REGIONAL AREAS BY JOB CATEGORY

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

SYSTEM

Minorities as a % of Population		13.3%	4.4%	1.7%	19.4%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	2	0	0	0	0
Sales	2	0	0	0	0
Office & Clerical	201	15 - 7.5%	6 - 3.0%	1 - 0.5%	22 - 11.0%
Mechanics	26	0	1 - 3.9%	0	1 - 3.9%
Servicemen	15	1 - 6.7%	0	0	1 - 6.7%
Line Drivers	474	26 - 5.5%	5 - 1.1%	0	31 - 6.5%
City & Dock	3,206	480 - 15.0%	218 - 6.8%	13 - 0.4%	711 - 22.2%
Miscellaneous	63	12 - 19.1%	2 - 3.2%	0	14 - 22.2%
TOTAL	3,989	534 - 13.4%	232 - 5.8%	14 - 0.4%	780 - 19.6%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

WESTERN

Minorities as a % of Population					
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	1	0	0	0	0
Sales	0				
Office & Clerical	48	3 - 6.3%	4 - 8.3%	1 - 2.1%	8 - 16.7%
Mechanics	3	0	1 - 33.3%	0	1 - 33.3%
Servicemen	5	1 - 20.0%	0	0	1 - 20.0%
Line Drivers	124	1 - 0.8%	3 - 2.4%	0	4 - 3.2%
City & Dock	1,532	305 - 19.9%	207 - 13.5%	10 - 0.7%	522 - 34.1%
Miscellaneous	21	3 - 14.3%	2 - 9.5%	0	5 - 23.8%
TOTAL	1,734	313 - 18.1%	217 - 12.5%	11 - 0.6%	541 - 31.2%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

NORTHERN

Minorities as a % of Population					
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT EIN
Supervisory	1	0	0	0	0
Sales	2	0	0	0	0
Office & Clerical	63	1 - 1.6%	0	0	1 - 1.6%
Mechanics	4	0	0	0	0
[illegible]	0				
Line Drivers	58	1 - 1.7%	1 - 1.7%	0	2 - 3.5%
City & Dock	886	74 - 8.4%	6 - 0.7%	0	80 - 9.0%
Miscellaneous	14	0	0	0	0
TOTAL	1,028	76 - 7.4%	7 - 0.7%	0	83 - 8.1%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

SOUTHERN

Minorities as a % of Population					
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT EIN
Supervisory	0				
Sales	0				
Office & Clerical	59	3 - 5.1%	0	0	3 - 5.1%
Mechanics	19	0	0	0	0
[illegible]	10	0	0	0	0
Line Drivers	146	10 - 6.9%	0	0	10 - 6.9%
City & Dock	788	101 - 12.8%	5 - 0.6%	3 - 0.4%	109 - 13.8%
Miscellaneous	28	9 - 32.1%	0	0	9 - 32.1%
TOTAL	1,050	123 - 11.7%	5 - 0.5%	3 - 0.3%	131 - 12.5%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

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MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

GENERAL OFFICE

Minorities as a % of Population		7.6%	10.9%	0.7%	19.2%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	31	8 - 25.8%	2 - 6.5%	0	10 - 32.3%
Technical					
Professional					
Line Drivers					
City T Pick					
Miscellaneous					
TOTAL	31	8 - 25.8%	2 - 6.5%	0	10 - 32.3%

SOURCES:

1. General Population Characteristics - 1970
United States Department of Commerce, Census Bureau

2. 1970 Subject Report, Persons of Spanish Surname
United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

HAGERSTOWN

Minorities as a % of Population		19.3%	N/A	0.4%	19.7%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical					
Technical					
Professional					
Line Drivers	146	14 - 9.6%	1 - 0.7%	0	15 - 10.3%
City T Pick					
Miscellaneous					
TOTAL	146	14 - 9.6%	1 - 0.7%	0	15 - 10.3%

SOURCES:

1. General Population Characteristics - 1970
United States Department of Commerce, Census Bureau

2. 1970 Subject Report, Persons of Spanish Surname
United States Department of Commerce, Census Bureau

6. DEFENDANT'S EXHIBIT YY

MINORITIES AS A PERCENTAGE OF TOTAL EMPLOYEES USED ON A CASUAL BASIS IN 1971 AT TEN SELECTED TERMINALS WHERE DEPOSITIONS HAVE BEEN TAKEN BY PLAINTIFF IN THE PRESENT PROCEEDING AND THE GENERAL OFFICE BY JOB CATEGORY

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

ATLANTA

Minorities as a % of Population		22.3%	N/A	0.2%	22.5%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	10	1 - 10.0%	0	0	1 - 10.0%
Mechanics	11	0	0	0	0
Servicemen	5	0	0	0	0
Line Drivers	21	0	0	0	0
City & Dock	189	35 - 18.5%	0	0	35 - 18.5%
Miscellaneous	2	0	0	0	0
TOTAL	238	36 - 15.1%	0	0	36 - 15.1%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

CHICAGO

Minorities as a % of Population		17.6%	N/A	1.1%	18.7%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	22	0	0	0	0
Mechanics	4	0	0	0	0
Servicemen					
Line Drivers	3	0	0	0	0
City & Dock	170	18 - 10.6%	2 - 1.2%	0	20 - 11.8%
Miscellaneous					
TOTAL	199	18 - 9.1%	2 - 1.0%	0	20 - 10.1%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

DALLAS

Minorities as a % of Population		16.0%	3.4%	0.8%	20.2%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	18	0	0	0	0
Mechanics					
Servicemen					
Line Drivers	12	0	0	0	0
City & Dock	41	5 - 12.2%	1 - 2.4%	0	6 - 14.6%
Miscellaneous					
TOTAL	71	5 - 7.0%	1 - 1.4%	0	6 - 8.5%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

DENVER

Minorities as a % of Population		4.1%	6.5%	1.4%	11.9%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	2	0	0	0	0
Mechanics					
Servicemen					
Line Drivers	1	0	0	0	0
City & Dock	35	1 - 2.9%	5 - 14.3%	0	6 - 17.1%
Miscellaneous	2	1 - 50.0%	1 - 50.0%	0	2 - 100%
TOTAL	40	2 - 5.0%	6 - 15.0%	0	8 - 20.0%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1963 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

LOS ANGELES (LAX)

Minorities as a % of Population		10.8%	9.3%	3.7%	23.9%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	8	0	2 - 25.0%	0	2 - 25.0%
Mechanics	1	0	0	0	0
Servicemen					
Line Drivers	8	0	0	0	0
City & Dock	397	92 - 21.2%	90 - 22.7%	2 - 0.5%	181 - 42.4%
Miscellaneous	7	1 - 14.3%	0	0	1 - 14.3%
TOTAL	421	93 - 22.1%	92 - 21.9%	2 - 0.5%	187 - 41.1%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1970 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

LOS ANGELES (LOS)

Minorities as a % of Population		10.8%	9.3%	3.7%	23.9%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	1	0	0	0	0
Mechanics	1	0	1 - 100%	0	1 - 100%
Servicemen	2	1 - 50.0%	0	0	1 - 50.0%
Line Drivers	49	1 - 2.0%	1 - 2.0%	0	2 - 4.1%
City & Dock	13	0	2 - 15.4%	0	2 - 15.4%
Miscellaneous					
TOTAL	66	2 - 3.0%	4 - 6.1%	0	6 - 9.1%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1970 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

MEMPHIS

Minorities as a % of Population		37.5%	N/A	0.3%	37.8%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	8	0	0	0	0
Mechanics	2	0	0	0	0
Servicemen	2	0	0	0	0
Line Drivers	13	1 - 7.7%	0	0	1 - 7.7%
City & Dock	207	32 - 15.5%	0	0	32 - 15.5%
Miscellaneous	5	2 - 40.0%	0	0	2 - 40.0%
TOTAL	237	35 - 14.8%	0	0	35 - 14.8

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1970 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

NASHVILLE

Minorities as a % of Population		17.8%	N/A	0.3%	18.1%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	3	1 - 33.3%	0	0	1 - 33.3%
Mechanics	2	0	0	0	0
Servicemen	1	0	0	0	0
Line Drivers	25	4 - 16.0%	0	0	4 - 16.0%
City & Dock	21	0	0	1 - 4.8%	1 - 4.8%
Miscellaneous	1	0	0	0	0
TOTAL	53	5 - 9.4%	0	1 - 1.9%	6 - 11.3%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1970 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

OKLAHOMA CITY

Minorities as a % of Population		8.5%	N/A	2.4%	10.9%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	2	0	0	0	0
Mechanics					
Servicemen	1	0	0	0	0
Line Drivers	10	1 - 10.0%	0	0	1 - 10.0%
City & Dock	40	5 - 12.5%	1 - 2.5%	1 - 2.5%	7 - 17.5%
Miscellaneous	4	0	0	0	0
TOTAL	57	6 - 10.5%	1 - 1.8%	1 - 1.8%	8 - 14.0%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1970 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

SAN ANTONIO

Minorities as a % of Population		6.9%	37.4%	1.1%	45.4%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical					
Mechanics					
Servicemen					
Line Drivers					
City & Dock	4	0	3 - 75.0%	0	3 - 75.0%
Miscellaneous					
TOTAL	4	0	3 - 75.0%	0	3 - 75.0%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1970 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

SAN FRANCISCO

Minorities as a % of Population		10.6%	6.4%	6.6%	23.6%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory	1	0	0	0	0
Sales					
Office & Clerical	13	2 - 15.4%	0	0	2 - 15.4%
Mechanics					
Servicemen	1	0	0	0	0
Line Drivers	14	0	1 - 7.1%	0	1 - 7.1%
City & Dock	882	200 - 22.7%	99 - 11.2%	7 - 0.8%	306 - 34.7%
Miscellaneous	1	0	0	0	0
TOTAL	912	202 - 22.2%	100 - 11.0%	7 - 0.8%	309 - 33.9%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1970 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

MINORITIES AS A PERCENTAGE OF POPULATION COMPARED TO
T.I.M.E.-DC'S PERCENTAGE OF MINORITY EMPLOYEES BY JOB CLASS AS OF 12-31-71

CASUALS

GENERAL OFFICE

Minorities as a % of Population		7.6%	10.9%	0.7%	19.2%
JOB CLASSIFICATION	TOTAL	NEGRO	SSA	OTHER	TOT MIN
Supervisory					
Sales					
Office & Clerical	31	8 - 25.8%	2 - 6.5%	0	10 - 32.3%
Mechanics					
Servicemen					
Line Drivers					
City & Dock					
Miscellaneous					
TOTAL	31	8 - 25.8%	2 - 6.5%	0	10 - 32.3%

Sources:

1. General Population Characteristics - 1970
   United States Department of Commerce, Census Bureau
2. 1970 Subject Report, Persons of Spanish Surname
   United States Department of Commerce, Census Bureau

7. **DEFENDANT'S EXHIBIT ZZ**

T.I.M.E.-DC, INC.

LINE DRIVER SENIORITY LISTS OF SELECTED TERMINALS TO SHOW EMPLOYEES WHO CAME TO TERMINALS AS A RESULT OF CHANGE OF OPERATIONS

DEFENDANT'S EXHIBIT ZZ

Oklahoma City Line Drivers Seniority Roster
November 17, 1971

	Name	Emp. #	Date Re-Domiciled by Change of Operation and Terminal From		Anniversary Date
1.	Shackleford, Tom	77728	8-8-62	PHX	9-5-50
2.	Welch, John	92128	8-8-62	PHX	9-6-50
3.	Davis, Marvin	21920	11-14-62	LUB	1-26-51
4.	Sublett, A. D.	83808	11-14-62	LUB	2-12-51
5.	Webb, Perry	91744	8-8-62	PHX	7-15-51
6.	Harden, Oscar	36064	7-14-67	LUB	9-27-51
7.	Dillard, Joe	23328	9-18-67	LUB	11-17-51
8.	Cannon, J. D.	14272			2-22-52
9.	Thomas, Paul	86208			5-18-52
10.	Becktold, A. D.	06080			9-5-52
11.	Wellborn, Robert	92224			3-31-53
12.	Matthews, R. R.	55488			8-13-54
13.	Fykes, Peter	29952	8-18-62	PHX	9-22-54
14.	Myers, Arthur	62656	7-15-67	ELP	10-15-54
15.	Craig, Johnny	20352			11-13-54

	Name	Emp. #	Date Re-Domiciled by Change of Operation and Terminal From		Anniversary Date
16.	Ponder, Roy	68160			11-15-54
17.	Adams, W. B.	00384	7-14-67	LUB	11-20-54
18.	Rhoades, Robt.	71968	7-15-67	ELP	11-29-54
19.	Clark, W. B.	16992	8-7-62	LUB	2-8-55
20.	Parisho, Laverle	65226	8-7-62	LUB	3-1-55
21.	Harris, Roy G.	36704			3-30-55
22.	Sides, E. R.	78944	8-2-62	ELP	4-6-55
23.	Clymer, C. C.	17568			10-31-55
24.	Edinburgh, A. R.	25568			5-7-56
25.	Hubbard, Oral	42208			5-22-56
26.	Westervelt, J. E.	92544			8-13-56
27.	Garland, Roy	30563			2-13-57
28.	Gwin, M. P.	35085			8-20-57
29.	Graham, Jack	33312	8-7-62	LUB	9-16-57
30.	Scroggin, James	77024	8-7-62	LUB	9-17-57
31.	Chance, Delbert	15904	7-14-67	LUB	9-19-57
32.	Harris, Ray E.	36672	9-5-62	LAX	10-11-57
33.	Neidel, Charles	62944	8-8-62	PHX	11-15-57
34.	Pierce, Frank	67552	7-14-67	LUB	5-24-58
35.	Dillon, Walter	23392	8-7-62	LUB	5-27-58
36.	Haggard, James	35232	8-7-62	LUB	5-29-58
37.	Snow, Frank	81280	7-14-67	LUB	6-20-58
38.	Barefoot, Boyd	04760			6-30-58
39.	McCutcheon, E.	56768	7-20-67	LAX	4-30-59
40.	Webb, John	91712			6-1-60
41.	Nelson, Don	63040			5-21-61
42.	Johnson, Ronald	45504			9-11-61

	Name	Emp. #	Date Re-Domiciled by Change of Operation and Terminal From		Anni-versary Date
43.	Camp, Eual	13760	11-6-62	ELP	3-1-62
44.	Casy, James	15360			3-11-62
45.	Ward, Harold	91296	8-3-67	PHX	4-30-62
46.	Tucker, Jimmie	88064			5-5-62
47.	Claxton, Jack	17088			8-26-62
48.	Collum, C. J.	18528	7-14-67	LUB	3-13-63
49.	Pressley, Howard	68864			3-14-63
50.	Wells, James	92352			4-16-63
51.	Sing, Raymond	79360			4-17-63
52.	Hill, George	39552			9-6-63
53.	Briggs, Thomas	10080	8-15-67	LAX	9-16-63
54.	Stephensen, Mark	82848	7-12-67	PHX	10-8-63
55.	Campbell, Charles	13824	7-10-67	PHX	11-5-63
56.	Daniel, R. M.	21408	7-14-67	LUB	3-5-64
57.	Cate, Wayne	15520	7-14-67	LUB	3-5-64
58.	Galyon, Don	30176	7-14-67	LUB	4-29-64
59.	Middleton, B.	59040			5-8-64
60.	Short, Earl	78688	7-12-67	PHX	5-13-64
61.	Hudson, J. R.	42368			6-20-64
62.	Sherwood, L.	78368	8-25-67	PHX	8-31-64
63.	Cavitt, Allen	15648	8-10-67	LUB	3-31-65
64.	Hammond, Bob	35744	8-10-67	LUB	4-2-65
65.	Mason, James	55168	8-15-67	LUB	4-8-65
66.	Roberts, Doug	72832			5-4-65
67.	Lea, Kenneth	50592			7-14-65
68.	Lawson, John	50432			8-16-65
69.	Henthorn, K.	38624			8-23-65

	Name	Emp. #	Date Re-Domiciled by Change of Operation and Terminal From		Anni-versary Date
70.	Hauserman, R.	37280	8-7-67	PHX	10-13-65
71.	Airy, James	00704			10-18-65
72.	Dixon, Roy	23680			10-26-65
73.	Clough, Lewis	17440	7-10-67	PHX	10-26-65
74.	Kelley, Ken	47424			11-26-65
75.	Plumlee, Joe	67936			12-7-65
76.	Avery, Vester	03360	8-4-67	ELP	3-13-66
77.	Easley, John	25376			3-14-66
78.	Huddleston, T.	42272			3-14-66
79.	Norton, Bill	63744	7-12-67	PHX	3-17-66
80.	Stubblefield	83776			4-18-66
81.	Moreland, C.	60896	8-7-67	PHX	5-13-66
82.	Jarrell, C.	44480			8-3-67
83.	Smith, C.	79936			5-25-68
84.	Rader, Don	69984			6-10-68
85.	Cline, Spencer	17293			6-2-69
86.	Watts, Chester	91568			6-7-69
87.	Rard, Tommy	70670			6-11-69
88.	Robinett, L.	75079			6-15-69
89.	Newman, M.	63309			5-23-70
90.	Marshall, L.	54587			5-23-70
91.	Woods, R.	96298			5-23-70
92.	Downing, G.	24147			6-22-70
93.	Zink, Roger	97905			7-1-70
94.	Mathison, E.	53361			7-6-70
95.	Craft, McKinley	20325			7-21-70
96.	Winget	95514			9-23-70

Name	Emp. #	Date Re-Domiciled by Change of Operation and Terminal From	Anni-versary Date
97. Lee, W.	50947		9-24-70
98. Woodall	96137		9-26-70
99. Hobbs	39866		10-3-70
100. Fronterhouse	29714		5-1-71
101. Mott, H. W.	61562		5-2-71
102. Couch, W. D.	19815		5-8-71
103. Norris, R., Jr.	63724		5-9-71
104. Parker, H. W.	65257		5-25-71
105. Booker, G. D.	08526		6-4-71
106. Kizer, J. W.	48345		6-12-71
107. Greene, C. F.	33832		6-13-71
108. Pendergraft, Dean	66646		7-17-71

TIME-DC

November 16, 1971

To: Lee Campeol, LAX
Vic Watkins, LOS
Jim Frazier, SFO
Roy Wilson, DEN
Wally Allison, ATL
Bill Murphy, CHI
D. N. Champlin, OKC
Bart O'Brien, MFS

From: C. F. Hutchinson, LGO

Subject: CA-5-868

Please send at your earliest convenience your Road Driver seniority list underlining those who were domiciled at your terminal by Change of Operations. Beside each man who was, indicate the month and the year they were redomiciled and the terminal from which they came.

Thank you.

/s/ Hutch
C. F. Hutchinson

CFH:jj

cc: Mr. Ray Cloward, NDO
Mr. Jim Reardon, SDO
Mr. Leo Boster, WDO
Frank Garrison, LGO
R. Ian Hunter, Attorney

TIME-DC

Inter-Office Memo

To: Jim Frazier at SFO

From: George Larson at SFO

Subject: Attached Date: 11-18-71

The eight men underlined are those demomiciled here by change of operations. The dates circled are the effective dates.

Lloyd Mynatt worked as a casual out of Seattle but did not establish seniority in Seattle, was hired here on the effective date of the change of op. 10-30-67.

Hayward Line Driver Seniority

Name	Terminal Date	Company Date
1. Gibbons, William	3/23/61	
2. Goodnough, Wilbur	2/15/65	POR 4/5/52

Name	Terminal Date		Company Date
3. Butts, Jesse	2/15/65	SEA	6/23/52
4. Rekstad, Harry	2/25/65	SEA	5/22/60
5. Brown, Delmar	2/15/65	POR	6/16/61
6. Totten, Millard	2/15/65	SEA	2/31/62
7. Farmer, Dale	2/14/66		
8. White, Ralph	5/9/67		
9. Comes, Melvin	8/2/67		
10. Salamoni, John	8/3/67		
11. Hylton, Howard	10/30/67	SEA	3/20/67
12. Oviatt, Donald	10/30/67	SEA	6/6/67
13. Schauble, Richard	10/30/67	SEA	6/13/67
14. Mynatt, Lloyd	10/30/67		
15. Richardon, J. C.	11/9/67		10/30/67
16. Carswell, Harold	11/9/67		10/30/67
17. Heimsoth, George	11/9/67		10/30/67
18. Reynolds, Omer	11/9/67		10/30/67
19. Vaughn, Eugene	5/1/68		
20. Weaver, Burris	5/21/68		
21. Jessen, Ralph	9/4/68		
22. Cose, Kenneth	11/1/68		
23. McKay, Ed	11/5/68		
24. Ladd, Cleatus	2/3/69		
25. Rawls, Ronald	2/26/69		
26. Brougham, William	11/10/69		
27. Silva, George	2/3/70		
28. Gewecke, Ronald	3/23/70		
29. Alexander, Floyd	7/7/70		
30. Bunkley, Alvin	9/3/70		

TIME-DC

Atlanta, Georgia

December 6, 1971

To: C. F. Hutchinson, LGO

From: James Johnson, Atlanta

Subject: CA-5-868

Attached are copies of the Atlanta terminal's current road driver seniority list annotated to show those domiciled at this terminal as a result of change of operations.

Please note, also, that we have shown those re-domiciled to Atlanta on a modified seniority basis from layoff status in Chattanooga and Nashville.

Best regards

/s/ James Johnson
James Johnson

JJ/jm

Enclosures

cc: Bruce Stroud, Atlanta

TIME-DC

Atlanta, Georgia

November 2, 1971

To: All Atlanta Line Drivers

From: Dan Pope, Atlanta Line Driver Supervisor

This is a corrected seniority list and will be considered correct as of this date:

1.	Fred Frith BRIS 5/68	3-28-45
2.	J. H. Teasley	3-1-47
3.	H. D. Pope	10-30-48
4.	H. F. Rawls	2-1-49
5.	Paul Tester BRIS 5/68	6-2-50
6.	Dale Alley BRIS 5/68	6-15-50
7.	H. C. Butler	7-19-50
8.	A. Edmondson	8-28-50
9.	F. J. Bailey BRIS 7/68	9-7-50
10.	Gerald Lewis	10-2-50
11.	Robert Dickens BRIS 6/68	10-22-50
12.	Paul Hawkins BRIS 6/68	10-22-50
13.	Reece Cole	6-21-51
14.	Jade Prince	11-26-51
15.	James Dickens BRIS 6/68	2-9-52
*16.	James F. Ely BRIS 7/68	9-3-52
17.	Don Kinsley BRIS 6/68	9-12-52
18.	John Bailey BRIS 5/68	9-12-52
19.	James Fulkerson BRIS 6/68	10-28-52
20.	Hubert Clark CGA 2/65	10-18-54
21.	I. D. Robinette NAS 5/69	3-15-55
22.	B. L. Webb NAS 6/68	2-6-56
23.	L. J. Harper MFS 6/65	9-19-57
24.	J. Ivey NAS 8/68	1-1-58
25.	F. Lawrence NAS 8/68	5-1-58
26.	J. P. Henley NAS 8/68	7-1-58
27.	C. R. McLeod	8-1-58
28.	J. L. Goodman	8-1-58
29.	F. Saunders NAS 5/69	4-24-59

30.	Vernon Stamps NAS 8/68	6-26-59
31.	C. Twilley	8-18-59
32.	B. D. Cole MFS 2/65	7-23-61
33.	C. L. Butler	4-23-62
34.	Ray Proctor VERONA 5/65	7-24-62
35.	C. J. Walters MFS 5/63	12-21-63
36.	P. O. Wright MFS 2/67	2-7-64
37.	E. H. Ferguson	2-28-64
38.	Dan Terry LUB 5/65	3-3-64
39.	K. P. Hutson	3-5-64
40.	Lamar Graves OKC 5/65	4-1-64
41.	J. T. Ellis OKC 6/65	7-1-64
42.	Billy Halas LUB 6/65	10-6-64
43.	Gordon Winter	6-18-65
44.	B. S. Wise	6-10-65
45.	Frank Tillman MFS 2/67	7-16-65
46.	Fred Humphrey	9-1-65
47.	Frank Ragsdale	9-5-65
48.	Raymond Brown	9-6-65
49.	S. E. Houze	6-6-66
50.	Van Roberts	7-2-66

Best regards

/s/ Dan Pope
Dan Pope

cc: Local Union 728—Certified 972658

cc: Bruce Stroud, Atlanta

Footnote: Those from Nashville came into Atl on a modified seniority basis from layoff status at NAS.

* Sick status—Never reported Atl tml for work

TIME-DC

LAX

December 23, 1971

Chuck Hutchinson—LGO

As per your request of November 16, 1971 enclosed is Road Driver seniority list of those domiciled at the LAX terminal, and LOS/ Yes

/s/ Lee A. Campeol
Lee A. Campeol

LAC/rh

Encl.

TIME-DC
4500 E. Bandini Blvd.
Los Angeles, California 90040

October 7, 1971

Line Drivers Master Seniority List
LAX and LOS Terminals

1. Fissler, V. H.	9-28-48	1-2-59	Den.
2. Von Nordheim, A.	12-1-48	6-1-59	Den.
3. Willis, J. E.	1-7-49	12-20-69	Los.
4. Resan, L. E.	3-3-49	1-2-59	Den.
5. Stickney, F. K.	3-4-49	1-2-59	Den.
6. Echols, F.	6-26-50	1-2-59	Den.
7. Dunn, N.	8-10-50	1-2-59	Den.
8. Gardner, S. M.	8-11-50	1-2-59	Den.

9. Bissitt, C. E.	10-1-50	12-20-69	Los.
10. Jesser, R. F.	2-11-51	1-2-59	Den.
11. McQuade, P.	3-25-51	1-2-59	Den.
12. Marcum, J.	7-1-51	12-20-69	Pho.
13. Fishel, P.	8-11-51	1-2-59	Den.
14. Nolen, E. R.	10-21-51	1-2-59	Den.
15. Radecke, R. L.	10-27-51	1-2-59	Den.
16. Cuske, J. B.	11-1-51	1-2-59	Den.
17. Ettleman, C. W.	11-15-51	1-2-59	Den.
18. Stultz, J. H.	11-26-51	1-2-59	Den.
19. Herron, L. J.	12-9-51	1-2-59	Den.
20. Poindexter, C.	1-26-52	1-2-59	Den.
21. Rossen, M.	1-27-52	1-2-59	Den.
22. Lukachy, A.	2-27-52	1-2-59	Den.
23. Renick, A.	3-1-52	12-20-69	Pho.
24. Reeder, J.	3-15-52	1-2-59	Den.
25. Reynolds, C.	5-1-52	1-2-59	Den.
26. Cessna, W.	6-19-52	1-2-59	Den.
27. Murie, D. C.	6-27-52	1-2-59	Den.
28. Daugherty, R.	7-31-52	1-2-59	Den.
29. Day, H. C.	8-2-52		
30. Ritts, R. L.	8-29-52	1-2-59	Den.
21. Ryan, A.	10-11-52	1-2-59	Den.
22. Banks, B. O.	11-10-52	1-2-59	Den.
23. Currey, C.	11-16-52	1-2-59	Den.
24. Gaffney, C.	11-29-52	1-2-59	Den.
25. Zearing, M.	12-16-52	4-27-66	Den.
26. Atwood, W.	5-16-53		
27. Hnatt, A.	5-18-53	4-27-66	Den.
28. Payne, J.	6-12-53	1-2-59	Den.

29. Dahl, C.	6-25-53	1-2-59	Den.
30. Roberts, W.	8-8-53	12-20-69	Pho.
31. Clark, H.	10-3-53	1-2-59	Den.
32. Gilmour, B.	11-29-53	1-2-59	Den.
33. Salisbury, C.	6-17-54	1-2-59	Den.
34. Dougherty, H. J.	8-21-54	1-2-59	Den.
35. Hills, C.	10-15-54	12-20-69	Pho.
36. Tullos, R.	11-16-54	1-2-59	Den.
47. McFalls, R.	2-24-55	8-2-68	Kcy.
48. Schroeder, E. P.	2-27-55	4-27-66	Den.
49. Gilbert, L.	3-23-55	1-2-59	Den.
50. Donaleson, T. E.	3-24-55	1-2-59	Den.
51. Martin, L. E.	4-14-55	1-2-59	Den.
52. Plank, L. M.	6-23-55	1-2-59	Den.
53. Coney, M.	9-22-55	1-2-59	Den.
54. Davis, W. E.	10-18-55	1-2-59	Den.
55. Barrett, W.	12-23-55	1-2-59	Den.
56. Ellison, C.	1-23-56	12-20-69	Pho.
57. Mackey, R. V.	3-7-56	1-2-59	Den.
58. Stewart, W. J.	3-9-56	1-2-59	Den.
59. Robb, N. D.	3-30-56	1-2-59	Den.
60. Ford, G.	4-10-56	12-20-69	Pho.
61. Barnes, H.	4-15-56	12-20-69	Pho.
62. Vanston, D.	5-7-56	1-2-59	Den.
63. Finch, W. K.	6-2-56	1-2-59	Den.
64. Quaiff, D. L.	6-6-56	1-2-59	Den.
65. Stephan, E.	6-6-56	1-2-59	Den.
66. Eason, H.	6-13-56	1-2-59	Den.
67. Bobzien, C.	7-8-56	1-2-59	Den.
68. Smith, H. W.	8-2-56	1-2-59	Den.

69. Pettit, C. T.	8-9-56	1-2-59	Den.
70. Claycamp, L.	10-12-56	1-2-59	Den.
71. Beard, I.	11-17-56	1-2-59	Den.
72. Brunner, J.	1-5-57	1-2-59	Den.
73. Peto, R. T.	1-31-57	1-2-59	Den.
74. Daniels, W. A.	2-3-57	1-2-59	Den.
75. Barbour, C.	2-10-57	1-2-59	Den.
76. Traywick, L.	2-23-57	1-2-59	Den.
77. Sieck, R.	2-28-57	1-2-59	Den.
78. Champlin, W. J.	3-28-57	1-2-59	Den.
79. Brandt, L.	5-2-57	1-2-59	Den.
80. Hawley, M. S.	6-29-57	1-2-59	Den.
81. Shepherd, C. L.	6-29-57	1-2-59	Den.
82. Kohl, R. W.	6-29-57	1-2-59	Den.
83. Coe, V. (Inactive)	7-2-57	1-2-59	Den.
84. Rickliefs, R.	7-4-57	1-2-59	Den.
85. Inel, C.	7-7-57	1-2-59	Den.
86. Stevens, J.	7-16-57	12-20-69	Pho.
87. Wallen, E.	7-21-57	1-2-59	Den.
88. Threlkeld, H.	7-30-57	1-2-59	Den.
89. Larimer, L.	8-14-57	1-2-59	Den.
90. Beye, G.	8-23-57	1-2-59	Den.
91. Foltz, J.	8-24-57	1-2-59	Den.
92. Wolfe, G.	8-27-57	1-2-59	Den.
93. Morris, H.	9-1-57	1-2-59	Den.
94. Walton, W.	10-5-57	1-2-59	Den.
95. Rowe, C. A.	10-13-57	12-20-69	Los.
96. Robertson, H.	10-21-57	1-2-59	Den.
97. Fisher, J.	10-31-57	1-2-59	Den.
98. Goodman, C.	11-5-57	1-2-59	Den.

99. Stewart, R. C.	2-22-58	1-2-59	Den.
100. Cox, J. C.	3-13-58	1-2-59	Den.
101. Day, M.	3-13-58	1-2-59	Den.
102. Jones, J. L.	3-13-58	1-2-59	Den.
103. Swetnam, W.	3-15-58	1-2-59	Den.
104. Kesterson, J.	3-18-58	1-2-59	Den.
105. Fisher, R.	3-19-58	1-2-59	Den.
106. Iran, H. D.	3-26-58	1-2-59	Den.
107. Rountree, W.	3-22-58	1-2-59	Den.
108. Wright, R.	4-7-58	12-20-69	Pho.
109. Hettiger, J.	6-28-58	1-2-59	Den.
110. Jurgansen, H.	10-31-58	1-2-59	Den.
111. Peterson, W.	11-4-58	1-2-59	Den.
112. Walden, K. L.	11-4-58	1-2-59	Den.
113. Fullerton, D.	11-7-58	1-2-59	Den.
114. Lunak, F.	11-18-58	1-2-59	Den.
115. Potts, N.	3-6-59		
116. Pospisil, L.	3-26-59		
117. Hornbeck, D.	4-2-59	8-69	Kcy.
118. Foster, M.	5-25-59		
119. McCurry, H. I.	5-26-59		
120. Moore, A. B.	5-27-59		
121. Morris, F.	5-27-59		
122. Wheeler, J. H.	6-3-59		
123. Lafluer, C.	6-12-59		
124. Yarber, N.	6-17-59		
125. McCracken, H.	7-14-59		
126. Queen, D.	7-14-59		
127. Cooney, L. M.	10-29-59		
128. Pope, R. A.	10-31-59		

129. O'Brien, D.	2-1-60		
130. Satterlund, C.	4-1-60		
131. Briggs, D.	4-9-60		
132. Lineblade, J.	4-14-60	8-68	Kcy.
133. Grider, B.	4-15-60		
134. Smith, C.	4-28-60		
135. Vaughn, W.	5-28-60		
136. Burgett, W.	6-5-60		
137. Blevins, J. F.	7-8-60		
138. Young, D.	7-9-60		
139. Collins, D.	4-5-61		
140. Roudabush, C.	5-15-61		
141. Thompson, E. J.	12-18-61		
142. Haynes, L. (Inactive)	1-21-62		
143. Dingle, A.	2-28-62		
144. Spangler, A. W.	3-8-62	4-27-66	Den.
145. Martin, F.	3-29-62	6-13-66	Den.
146. Elrick, S.	3-30-62	6-13-66	Den.
147. Swartwood, J.	4-25-62	6-15-66	Den.
148. Skullr, G.	4-27-62		
149. Kippes, J. J.	5-15-62		
150. Craig, R.	6-22-62		
151. Coghill, F. L.	7-28-62		
152. Lansing, M.	8-25-62	12-20-69	Pho.
153. Perkins, H.	8-26-62		
154. Walthers, W.	9-7-62		
155. King, H.	9-26-62	12-20	Pho.
156. Stephenson, J.	10-1-62	12-20	Pho.
157. Kidwell, M.	10-17-62	6-15-66	Pho.
158. Binnell, C.	11-1-62		

159. O'Connor, T.	12-18-62	10-20-69	Pho.
160. McClure, A. G.	1-24-63		
161. Hucke, D.	3-23-63	4-27-66	Pho.
162. Brunick, L.	3-23-63	5-17-66	Pho.
163. Elliott, J. H.	3-23-63	4-27-66	Pho.
164. Hough, H.	4-12-63		
165. Will, M.	4-20-63		
166. Calvin, R.	4-23-63		
167. Smith, B. C.	4-29-63	12-69	Pho.
168. Gonzales, E.	5-1-63	12-20-69	Pho.
169. Hafele, R. E.	6-6-63	12-69	Pho.
170. Lake, D.	6-9-63		
171. Cole, V. (Inactive)	6-20-63		
172. Defraga, T. (Inactive)	7-4-63		
173. Norris, L.	8-11-63		
174. Tanner, E.	8-17-63	8-68	Kcy.
175. Murphy, R.	8-18-63	8-68	Kcy.
176. Silvia, M.	8-18-63	8-68	Kcy.
177. Myers, H. L.	8-19-63		
178. Morrison, R.	9-4-63	12-69	Pho.
179. Ervin, J.	9-7-63		
180. Harvey, E.	10-3-63	4-27-66	Den.
181. Hubble, C. V.	10-3-63	5-17-66	Den.
182. Kimberling, W.	10-28-63	12-69	Pho.
183. Ratlieff, O.	11-2-63	8-68	Kcy.
184. Copeland, R.	2-20-64	8-68	Kcy.
185. Germann, R. H.	4-2-64	12-69	Pho.
186. Faught, L.	4-15-64	12-69	Pho.
187. Terrell, W. E.	4-24-64	6-2-66	Den.
188. Hampton, W.	5-8-64	5-11-66	Den.

189. Richeson, J. F.	5-13-64	12-69	Pho.
190. Steely, F.	5-23-64		
191. Morrison, J. L.	6-6-64		
192. Husband, T.	6-7-64	12-69	Los.
193. Jones, L.	6-7-64		
194. Parrish, J.	6-9-64	12-69	Los.
195. Everhart, N.	6-23-64	12-69	Los.
196. McGehee, O.	6-25-64	12-69	Los.
197. Myers, H. B.	7-1-64	12-69	Los.
198. Bearden, H. G.	7-5-64	12-69	Los.
199. Walker, R. A.	7-23-64		
200. Lauridsen, H.	7-28-64	8-68	Kcy.
201. Debacc, J. J.	7-31-64	12-69	Los.
202. Eckleberry, W.	8-3-64		
203. Crase, J.	8-6-64	12-69	Pho.
204. Tritt, D.	8-7-64		
205. Reed, K. H.	8-8-64	12-69	Los.
206. Burwell, L. F.	8-8-64	12-69	Los.
207. Goode, F. G.	8-25-64	12-69	Los.
208. Bowdish, J. L.	8-25-64	12-69	Los.
209. Fikse, C. J.	8-26-64		
210. Hall, F. W.	9-2-64		
211. McGhairk, F.	9-4-64		
212. Baker, J. O.	9-12-64		
213. Hipchen, R. D.	9-16-64	12-69	Los.
214. Montgomery, K.	9-24-64	12-69	Pho.
215. Lovette, M. B.	10-1-64	12-69	Los.
216. Barnett, J. C.	10-9-64	12-69	Los.
217. Russell, R.	1-13-65	5-16-66	Den.
218. Hansen, G.	3-7-65	6-15-66	Den.

219. Alton, M.	3-9-65		
220. Bennett, D.	3-10-65	6-14-66	Den.
221. Parker, D.	4-17-65	6-13-66	Den.
222. Boone, J.	4-21-65		
223. Sawyer, R.	5-1-65		
224. Dillabough, M.	5-2-65		
225. Moore, J.	5-5-65		
226. Shoemaker, N.	5-13-65	12-69	Pho.
227. Priest, H.	5-14-65	12-69	Los.
228. Logan, T.	5-17-65	8-68	Kcy.
229. Ross, P.	5-22-65	6-9-66	Den.
230. Beecher, W.	5-27-65	8-68	Kcy.
231. Robinson, G. (Inactive)	5-27-65		
232. Smith, D.	5-29-65		
233. Ashby, W. J.	6-11-65	12-69	Los.
234. Armstrong, G.	6-21-65	8-68	Kcy.
235. Sims, G.	6-26-65		
236. Cook, G.	7-1-65		
237. Slider, R.	7-2-65	6-13-66	Den.
238. Thompson, E. E.	7-11-65	6-7-66	Den.
239. Koen, L.	7-17-65	6-13-66	Den.
240. Thieman, V.	7-19-65		
241. Puryear, H. W.	7-28-65	12-69	Los.
242. Kabat, J.	8-4-65	8-68	Kcy.
243. Leckman, D. A.	8-28-65	12-69	Los.
244. King, R.	9-10-65	12-69	Pho.
245. Beresford, J. (Inactive)	9-13-65	12-69	Pho.
246. McWhorter, K.	9-14-65	12-69	Pho.
247. Rose, R. (Inactive)	9-17-65	6-13-66	Den.
248. Gordon, R.	10-9-65	8-68	Kcy.

249. Purcey, J.D.	2-4-66	12-69	Los.
250. Merry, G. E.	2-17-66	12-69	Los.
251. Farrens, D.	3-17-66	12-69	Pho.
252. Kozisek, L.	3-19-66		
253. Ross, C. D.	4-22-66	8-68	Kcy.
254. Sigwing, G. O.	4-22-66	12-69	Los.
255. Hobbs, C. J.	6-18-66	12-69	Los.
256. Bullard, A. C.	6-19-66	12-69	Los.
257. Leblanc, J.	6-23-66		
259. Michel, D.	6-23-66	8-68	Kcy.
260. Parkerson, C. E.	6-24-66		
261. Hooper, C. G. (Inactive)	6-24-66		
262. Piche, L. J.	6-24-66		
263. Morris, E. R.	6-26-66		
264. Redman, R. W.	6-29-66		
265. Tooley, R.	7-2-66	12-69	Pho.
267. Spooner, D. L.	7-10-66		
268. Jones, W.	7-28-66		
269. Mishler, V.	7-28-66		
270. Teel, C. A.	8-3-66	12-69	Los.
271. Briggs, C.	8-4-66	12-69	Pho.
272. Cormelson, J.	8-10-66	12-69	Pho.
273. Loper, J. E.	8-24-66	12-69	Los.
274. Heinz, G.	9-28-66	12-69	Pho.
275. Pierce, O. H.	10-13-66	12-69	Los.
276. Mellor, G. (Inactive)	10-29-66	12-69	Pho.
277. Griesel, J.	11-17-66		
278. Polk, J. E.	12-3-66		
279. Kelling, D.	12-4-66		
280. Davidson, E. P.	3-29-67		

281. Courtright, P. F.	4-1-67	12-69	Los.
282. Kirk, W. G.	5-15-67		
283. Cave, J. H.	5-16-67		
284. Kirsh, Enos	6-9-67	12-69	Los.
285. Nicoll, B. R.	6-22-67	12-69	Los.
286. Anderson, H. M.	8-31-67		
287. Brooks, C. D.	9-1-67		
288. Zurbrugg, W.	9-2-67		
289. Looney, G. A.	10-15-67		
290. Guthrie, T.	10-29-67		
291. Patridge, B.	11-9-67	12-69	Pho.
292. Bowles, E.	11-10-67		
293. Bond, K.	11-15-67		
294. Littrell, J.	11-19-67		
295. Koch, I. J.	12-18-67		
296. Ferrari, P.	3-4-68	12-69	Pho.
297. Lee, L.	3-6-68	12-69	Pho.
298. Gregory, G.	3-22-68	12-69	Pho.
299. Irving, S. S.	3-22-68		
300. Allen, Lonnie, Jr.	3-28-68		
301. Smith, L. C.	4-2-68		
302. Baker, J. E.	4-5-68		
303. Piper, V. T.	4-23-68		
304. Bayley, K. L.	4-27-68		
305. Seeley, R. C.	5-2-68		
306. Pitts, B. H.	5-16-68		
307. Stoy, J.	5-18-68		
308. Frye, M.	5-29-68		
309. Harmon, M. K.	6-11-68	12-69	Los.
310. Bitner, F. L.	6-28-68	12-69	Los.

311. Feeley, W. L.	12-7-68		
312. Graves, D. L.	12-27-68		
313. Burch, A. F.	1-31-69		
314. McNellis, D. L.	2-1-69	12-69	Los.
315. Pugh, A.	2-5-69	12-69	Pho.
316. Hubbard, R.	2-10-69	12-69	Pho.
317. Valentine, D.	2-13-69	12-69	Pho.
318. Garland, R.	3-6-69	12-69	Pho.
319. Coleman, H. D.	3-24-69		
320. Totty, D. D.	3-26-69		
321. Pollock, R. A.	3-26-69		
322. Ralston, R. M.	3-27-69		
323. Joy, Roland M.	4-2-69	12-69	Los.
324. Zielke, A. H.	4-2-69	12-69	Los.
325. Delay, B. F.	4-3-69		
326. Deeter, J. D.	4-5-69		
327. Allen, A. L.	4-9-69		
328. Robbins, J. L.	4-16-69		
329. Harris, E. E.	4-23-69		
330. Jorgensen, W. R.	4-26-69	12-69	Los.
331. Libby, W. G.	5-8-69		
332. Ramsey, R. B.	5-9-69	12-69	Los.
333. Davis, J., Jr.	5-10-69	12-69	Los.
334. Taylor, G. H.	6-10-69	12-69	Los.
335. Fox, J. L.	6-10-69	12-69	Los.
336. Woodall, W. F.	6-11-69	12-69	Los.
337. Howard, I. B.	6-12-69	12-69	Los.
338. Monroe, C. W.	7-28-69	12-69	Los.
339. McGuire, D. L.	7-28-69	12-69	Los.
340. Hilty, R. B.	8-2-69	12-69	Los.

341. Lowery, J. D.	5-18-70	12-69	Los.
342. Smith, M. C.	5-22-70		
343. Campbell, A. K.	5-26-70		
344. Elliott, B. M.	5-29-70		
345. Howard, A.	6-2-70		
346. Shaeffer, F. E.	6-3-70		
347. Thompson, M. H.	6-4-70		
348. Torn, C. J.	6-6-70		
349. Schoenberger, C. S.	7-9-70		
350. Thomas, R.	7-17-70		
351. Kinsey, F. V.	7-23-70		
352. Marsi, M. J.	7-28-70		
353. Dodson, A. E.	7-29-70		
354. Winter, K.	3-30-71		
355. Landers, P.	3-30-71		
356. Berdahl, R.	4-6-71		
357. Davis, J. C.	4-6-71		
358. Leduc, L.	4-7-71		
359. Fisher, T.	4-7-71		
360. Pierson, B.	4-7-71		
361. MacDonald, K.	4-8-71		
362. Nevins, W.	4-18-71		
363. Fiscus, D.	4-21-71		
364. Moore, C.	4-22-71		
365. Fox, C. J.	5-18-71		
366. Gill, L.	5-18-71		
367. Rogers, J.	7-7-71		
368. Buss, I. L.	7-8-71		
369. Maddocks, S.	7-8-71		
370. Taylor, G. J.	7-14-71		

371. Sparks, W.	7-23-71
372. Uzonyi, F. W.	7-24-71
373. Buckmaster, R. D.	7-27-71
374. Carr, R. B.	7-27-71
375. Starr, H.	7-27-71
376. Richmond, T.	7-28-71
377. Hall, R. L.	8-11-71
378. Blakeboro, N. L.	8-19-71
379. Barclay, D.	8-20-71
380. Womack, J.	8-25-71
381. O'Haver, J.	8-31-71
382. Deering, G.	9-7-71
383. Rodgers, W.	9-10-71
384. Nicklin, B.	9-16-71
385. Theodore, P.	9-30-71
386. Fuary, D.	10-2-71

N. M. Rockwell,
Manager of Highway Operations

8. **Defendants' Exhibit AAA**

(This designation for printing has been withdrawn)

9. **Defendant's Exhibit BBB**

CHARTS AND GRAPHS OF PROFESSOR GEORGE REGARDING MINORITY GROUPS BASED ON DEMOGRAPHIC, SOCIO-ECONOMIC AND T.I.M.E.-DC EMPLOYMENT FACTORS

Table 1

FERTILITY RATES OF WOMEN AGED 35 TO 44

ETHNIC GROUP	AVERAGE NUMBER OF CHILDREN
Mexican-American	4.4
Black	3.6
Total Population	2.9

SOURCE: U. S. Census Bureau 1969 Study. AP dispatch, Lubbock Avalanche-Journal, 11-28-71.

Table 2

MEDIAN AGES - WHITE/NON-WHITE

YEAR	MEDIAN AGE		
	WHITE	NON-WHITE	DIFFERENCE
1950	30.7	26.0	4.7 yrs.
1960	30.3	23.5	6.8 yrs.
1969	29.3	21.2	8.1 yrs.

SOURCE: Census of Population 1960, Volume 1, Characteristics of Population. Part 1, United States Summary, pp. 1-153-4, and Statistical Abstract of the United States - 1970.

Table 3

PERCENTAGE OF GROUPS 20 - 64 YEARS OF AGE

GROUP	%
White	52.9
Non-White	48.3
DIFFERENCE	4.6

SOURCE: Census of Population 1960, Volume 1, Characteristics of Population. Part 1, United States Summary, pp. 1-153-4.

Table 4

PERSONS IN EACH AGE GROUP AS A PERCENT OF PERSONS AGED 0-4

STATES OF ARIZONA, CALIFORNIA, COLORADO, NEW MEXICO, TEXAS - 1960

AGE	ETHNIC GROUP		
	ANGLO	SPANISH SURNAMED	BLACK
20-24	58.4	45.2	46.4
15-19	67.1	55.4	50.6
10-14	84.7	74.1	67.2
5-9	93.6	87.5	84.8
0-4	100.0	100.0	100.0

SOURCE: The United States Commission on Civil Rights. "The Unfinished Education: Outcomes for Minorities in the Five Southwestern State". Mexican American Educational Series Report II. U. S. Government Printing Office, October, 1971.

Table 5

POPULATION AND SES CHARACTERISTICS BY CENSUS REGION

REGION	% OF POPULATION*			SOCIO-ECONOMIC STATUS**		
	WHITE	NEGRO	OTHER	WHITE	NEGRO	OTHER
Northeast	92.9	6.8	.3	56.7	37.9	46.7
North Central	93.0	6.7	.3	54.8	37.4	41.6
South	79.1	20.6	.3	49.1	20.7	32.0
West	92.6	3.9	4.1	58.6	40.1	47.6
TOTAL U. S.	88.6	10.5	.9			

*SOURCE: Census of Population 1960. Volume 1, Characteristics of Population. Part 1, United States Summary, p. 1-164.

**SOURCE: Census of Population 1960. Special Report, Socio-Economic Status, Pc (2), 5c.

NOTE: Socio-Economic Status (SES) is determined by educational level, size of home and facilities therein, reading material available in the home, income and source of income, etc.

Table 6

T.I.M.E.-DC, INC. FACILITIES WITH OVER 50 EMPLOYEES

VARIANCE FROM "EXPECTED" BLACK HIRING	CENSUS REGION			
	WEST	"NORTH"*	SOUTH	TOTALS
Low or plus (+2.7 to -5.4)	7	1	5**	13
High (-5.7 to -24.0)	0	7	6	13

*Northeast and North Central combined.

**Includes four Texas facilities in essentially "Western" communities.

SOURCE: SUMMARIES; System, Northern, Western, Southern Divisions. T.I.M.E.-DC, Inc. Personnel Manager. (as of 9-30-71)

Table 7

STANDARDIZED DEATH RATES FOR WHITES AND NEGROES
IN SOUTHERN AND NON-SOUTHERN STATES FOR 1950 AND 1960

		1950		1960	
		WHITE	NEGRO	WHITE	NEGRO
South	Alabama	9.0	13.7	9.1	13.2
	Arkansas	7.9	10.6	8.5	10.9
	Florida	8.4	15.1	8.2	14.3
	Georgia	8.9	14.5	9.0	14.2
	Louisiana	8.9	13.1	9.3	12.7
	Mississippi	8.9	13.3	8.8	12.5
	North Carolina	8.6	14.6	9.0	14.4
	South Carolina	9.4	15.0	9.7	15.0
	Tennessee	9.1	14.2	8.9	13.0
	Virginia	9.3	15.7	9.1	14.0
Non-South	Colorado	8.7	10.3	8.7	10.5
	Connecticut	8.6	12.7	9.0	13.1
	Indiana	9.4	15.7	9.2	13.0
	Iowa	8.5	12.9	8.6	12.8
	Massachusetts	9.0	11.9	9.5	11.8
	Michigan	9.3	14.3	9.2	12.2
	Minnesota	8.4	13.7	8.6	10.2
	Nebraska	8.2	14.1	8.3	13.8
	Oregon	8.6	12.2	8.7	12.5
	Pennsylvania	10.0	15.8	9.9	13.2
	Rhode Island	9.7	16.0	9.5	11.9
	Utah	8.5	13.9	8.3	14.3
	Washington	8.8	13.9	8.8	11.8
	Wisconsin	8.9	15.1	8.9	11.7
	Wyoming	9.2	17.0	9.4	14.6

SOURCE: Computed from census and vital statistics data. Patterson, W. B., "Whites and Negroes: A Demographic Study of Relative Deprivation." M.A. Thesis, Texas Tech University, 1970.

Table 8

NEW TB CASE RATES PER 100,000 POPULATION
BY HEALTH DISTRICT: NEW YORK CITY, 1969

	POPULATION DENSITY		
INCOME:	HIGH	MEDIUM	LOW
Low	79.7	46.9	-*
Medium	39.9	39.6	19.0
High	17.1	19.5	15.8

*Too few low income persons lived in low density districts to allow for a meaningful calculation of this figure.

SOURCE: "Environmental Epidemiology". The Sciences, Vol. 12, No. 2, March, 1972. Published by The New York Academy of Sciences.

Table 9

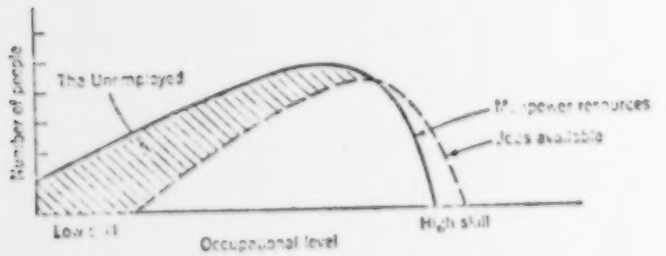
WHITE - BLACK MOBILITY
(% MOVING)
MARCH, 67 - MARCH, 68

GROUP	WITHIN STATES	BETWEEN STATES
White	3.4%	3.5%
Black	1.8	2.5
Difference	1.6%	1.0%

SOURCE: Statistical Abstract of the United States - 1970., p. 33, No. 37.

Table 10

A HYPOTHETICAL NORMAL DISTRIBUTION OF JOBS (DOTTED LINE) COMPARED TO THE AVAILABLE MANPOWER (SOLID LINE)



SOURCE: Tiffany, D. W., Cowan, J. R. and Tiffany, P. M. "The Unemployed: A Social-Psychological Portra... Prentice-Hall, 1970. p. 105.

10. **Defendants' Exhibit CCC**

FOLIO

EMPLOYMENT PATTERNS

All Minority Groups as a Percentage of Total Work Force at T.I.M.E.-DC, Inc.

1967 Through 1972

Table III

Minorities as a Percentage of Total Work Force— T.I.M.E.-DC, Inc.

For the Years 1967 Through 1972 (April 1)

Group	1967	1968	1969	1970	1971	1972
All Minorities	7.1%	7.5%	8.3%	8.9%	9.6%	10.5%
Negro	3.4%	3.7%	4.3%	4.5%	4.8%	5.5%
Spanish Surnamed	3.1%	3.2%	3.3%	3.6%	3.9%	4.1%

Source: Equal Employment Opportunity Employer Information Report EEO-1, 1967 and 1968 reports of:

T.I.M.E. Freight, Inc.
DC International, Inc.

1969, 1970 and 1972 reports of:
T.I.M.E.-DC, Inc.

(all on file at company General Offices, Lubbock, Texas)

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11. **Defendants' Exhibit DDD**

FOLIO

EMPLOYMENT PATTERNS

Minorities as a Percentage of Total Work Force Five Southwestern States

1967 Through 1972

Table IV

Minorities as a Percentage of Total Work Force T.I.M.E.-DC, Inc. In the Five Southwestern States 1967 through 1972

Group	1967	1968	1969	1970	1971	1972
All Minorities	13.0%	12.4%	14.2%	15.2%	15.8%	17.7%
Negro	5.1%	4.8%	5.9%	6.0%	6.2%	7.3%
Spanish Surnamed	7.2%	6.9%	7.5%	8.2%	8.5%	9.2%

Source: Equal Employment Opportunity Employer Information Report, EEO-1
1967 and 1968 Reports of:

T.I.M.E. Freight, Inc.
LASME, Inc,
DC International

1969, 1970, 1971, and 1972 Reports of:
T.I.M.E.-DC, Inc.

(all on file at Company General Offices, Lubbock, Texas)

12. **Defendants' Exhibit EEE**

FOLIO

EMPLOYMENT PATTERNS

Persons of Spanish Surname in the Five Southwestern States
as of December 31, 1971

Table II

Persons of Spanish Surname in Those Locations Where T.I.M.E.-DC Has Terminal Facilities in the Five Southwestern States

Totals and Distribution by State as of December 31, 1971

State	Total Population	Total Spanish Surnamed	Percent of Spanish Surnamed
Arizona	1,358,191	179,153	13.2
California	12,718,090	1,009,909	7.9
Colorado	1,390,875	86,223	6.2
New Mexico ..	26,000	1,053	4.1
Texas	3,030,296	562,959	18.6
TOTAL ...	18,523,452	1,839,297	9.9

Source: **1963 Subject Report, Persons of Spanish Surname,** United States Department of Commerce, Census Bureau.

Table II-A

Persons of Spanish Surname Employed in T.I.M.E.-DC Facilities in the Five Southwestern States

Totals and Distribution by State as of December 31, 1971
Compared to Population

State	Total[1] Employment	Total[1] Spanish Surnamed Employed	Percent of Spanish Surnamed Employed	Percent of[2] Spanish Surnamed in Population	Difference
Arizona ..	128	6	4.7	13.2	(8.5)
California	1,311	147	11.2	7.9	3.3
Colorado .	677	24	3.5	6.2	(2.7)
New Mexico	4	0	0.0	4.1	(4.1)
Texas	574	67	11.7	18.6	(6.9)
Total ..	2,694	244	9.1	9.9	(0.8)

Source: [1] Records of the Company
[2] Table II

13. **Defendants' Exhibit FFF**

FOLIO

EMPLOYMENT PATTERNS

Minorities as a Percentage of Total Work Force

Arizona
California
Colorado
Texas

1967 Through 1972

Table V

Minorities as a Percentage of Total Work Force—T.I.M.E.-DC, Inc.—For the Years 1967 through 1972 Four Southwestern States

Group: All Minorities

State	1967	1968	1969	1970	1971	1972
Arizona	0.0%	1.3%	4.3%	9.3%	10.3%	14.6%
California	17.6%	17.1%	16.9%	18.4%	19.6%	21.4%
Colorado	7.9%	6.4%	9.1%	10.1%	9.1%	11.1%
Texas	13.2%	16.8%	17.1%	14.6%	16.6%	17.7%

Group: Negro

State	1967	1968	1969	1970	1971	1972
Arizona	0.0%	0.0%	2.2%	3.1%	3.2%	6.5%
California ...	6.7%	6.6%	7.0%	7.0%	7.5%	8.3%
Colorado	4.7%	3.9%	5.8%	6.0%	5.3%	6.6%
Texas	1.2%	1.7%	3.5%	4.0%	4.9%	5.7%

Group: Persons of Spanish Surname

State	1967	1968	1969	1970	1971	1972
Arizona	0.0%	1.3%	2.2%	3.9%	4.8%	4.9%
California	9.6%	9.3%	8.6%	10.1%	10.7%	11.4%
Colorado	2.9%	2.3%	2.9%	3.5%	3.2%	3.8%
Texas	12.0%	15.2%	13.4%	10.2%	10.9%	11.8%

Source: Equal Employment Opportunity Employer Information Report, EEO-1, 1967 and 1968 reports of:

T.I.M.E. Freight, Inc.
LASME, Inc.
DC International, Inc.

1969, 1970, 1971 and 1972 reports of:
T.I.M.E.-DC, Inc.

(all on file at Company General Offices, Lubbock, Texas)

14. DEFENDANT'S EXHIBIT KKK

EFFECTIVE EARNINGS PER HOUR OF T.I.M.E.-DC EMPLOYEES AT FOUR TERMINALS AS OF MARCH 31, 1971

	Union Worker's Hourly Rate	Union Worker's Effective Hourly Rate	Foreman's or Supervisor's Effective Hourly Rate	Foreman's or Supervisor's 40 Hour Work Week Rate	Foreman's and/or Supervisor's Hourly Rate*
Dock					
Chicago	$4.52	$4.58	$5.24	$5.40	$5.85
Denver	4.82	5.10	4.45	5.02	5.44
Los Angeles (LAX)	4.99	5.17	5.26	5.68	6.15
Los Angeles (LOS)	4.99	5.21	4.93	5.40	5.85
City					
Chicago	$4.76	$5.21	$4.59	$5.66	$6.13
Denver	4.82	5.11	4.69	5.34	5.78
Los Angeles (LAX)	4.99	5.39	4.80	5.71	6.19
Los Angeles (LOS)	4.99	5.28	4.67	5.29	5.73
Office					
Chicago	$4.10-$5.14	$4.46-$5.59	$4.76 (6-71)	$5.77	—
Denver	3.36- 4.53	3.53- 4.76	5.04	5.62	$6.09 + $5.76
Los Angeles (LAX)	4.45- 5.16	4.71- 5.46	5.42	6.13	7.03
Los Angeles (LOS)	4.28- 5.01	4.40- 5.15	6.41	6.78	7.34

* Source: Plaintiff's Exhibit No. 230

	Union Worker's Average Monthly Income	Foreman & Supervisor's Average Monthly Income
Dock		
Chicago	$ 818.09	$ 935.71
Denver	997.61	870.83
Los Angeles (LAX)	967.98	983.89
Los Angeles (LOS)	987.43	936.25
City		
Chicago	$1,111.95	$ 981.09
Denver	1,007.06	925.00
Los Angeles (LAX)	1,110.58	990.00
Los Angeles (LOS)	1,036.04	916.67
Office		
Chicago	$936.47-$1,174.01	$1,000.00 (6-71)
Denver	682.34- 919.94	975.00
Los Angeles (LAX)	921.03- 1,067.99	1,062.50
Los Angeles (LOS)	805.23- 942.57	1,175.00

Formula:

(40 Hours + (1.5 overtime hours)) x (Hourly Rate) x 4.33 = Average Monthly Income for Union Workers

Chicago

Dock Foreman

1. Average Monthly Wage	$ 935.71	
2. Average Weekly Wage	$ 215.93	
3. Average Hours—Dock	41.2	Hours
4. Hourly Rate 2 ÷ 3	$ 5.24	

City Driver Supervisor

1. Average Monthly Wage	$ 981.09	
2. Average Weekly Wage	$ 226.40	
3. Average Hours—City	49.3	Hours
4. Hourly Rate 2 ÷ 3	$ 4.59	

Office Manager

1. Average Monthly Wage	$1,000.00	
2. Average Weekly Wage	$ 230.77	
3. Average Hours—Office	48.5	Hours
4. Hourly Rate 2 ÷ 3	$ 4.76	

Source: Plaintiff's Exhibit No. 204, Printout—"Personnel List" as of March 31, 1971.

Denver

Dock Foreman

1. Average Monthly Wage	$870.83	
2. Average Weekly Wage	$201.12	
3. Average Hours—Dock	45.2	Hours
4. Hourly Rate 2 ÷ 3	$ 4.45	

City Driver Supervisor

1. Average Monthly Wage	$925.00	
2. Average Weekly Wage	$213.46	
3. Average Hours—City	45.5	Hours
4. Hourly Rate 2 ÷ 3	$ 4.69	

Office Manager

1. Average Monthly Wage	$975.00	
2. Average Weekly Wage	$225.00	
3. Average Hours—Office	44.6	Hours
4. Hourly Rate 2 ÷ 3	$ 5.04	

Source: Plaintiff's Exhibit No. 204, Printout—"Personnel List" as of March 31, 1971.

Los Angeles (LAX)

Dock Foreman

1. Average Monthly Wage	$ 983.89	
2. Average Weekly Wage	$ 227.05	
3. Average Hours—Dock	43.2	Hours
4. Hourly Rate 2 ÷ 3	$ 5.26	

City Driver Supervisor

1. Average Monthly Wage	$ 990.00	
2. Average Weekly Wage	$ 228.46	
3. Average Hours—City	47.6	Hours
4. Hourly Rate 2 ÷ 3	$ 4.80	

Office Manager

1. Average Monthly Wage	$1,062.50	
2. Average Weekly Wage	$ 245.19	
3. Average Hours—Office	45.2	Hours
4. Hourly Rate 2 ÷ 3	$ 5.42	

Source: Plaintiff's Exhibit No. 204, Printout—"Personnel List" as of March 31, 1971.

Los Angeles (LOS)

Dock Foreman

1. Average Monthly Wage	$ 936.25	
2. Average Weekly Wage	$ 216.06	
3. Average Hours—Dock	43.8	Hours
4. Hourly Rate 2 ÷ 3	$ 4.93	

City Driver Supervisor

1. Average Monthly Wage	$ 916.67	
2. Average Weekly Wage	$ 211.54	
3. Average Hours—City	45.3	Hours
4. Hourly Rate 2 ÷ 3	$ 4.67	

Office Manager

1. Average Monthly Wage	$1,175.00	
2. Average Weekly Wage	$ 271.15	
3. Average Hours—Office	42.3	Hours
4. Hourly Rate 2 ÷ 3	$ 6.41	

Source: Plaintiff's Exhibit No. 204, Printout—"Personnel List" as of March 31, 1971.

---

15. **Defendants' Exhibit LLL**

Memphis Line Haul Accident Summary

Year	Line Haul Total Accidents	Accidents City Transferees	Number of Drivers	Accidents Regular Line Haul	Number of Drivers
1969	28	12	15	16	77
1970	33	24	25	9	83
1971	24	10	32	14	76

Source: Records of the Company.

---

16. **Defendants' Exhibit MMM**

1971 Earnings
Of All Driver Employees at Selected Terminals

	City Drivers		Line Drivers		Difference
	=	$	=	$	$
System	1440	$11,185.83	2089	$12,893.57	$ 1,707.74
Atlanta	32	10,423.39	57	13,827.19	3,403.80
Chicago	87	12,444.33	106	16,368.66	3,924.33
Dallas	31	10,676.61	24	11,910.74	1,234.13
Denver	57	12,175.88	350	12,887.02	711.14
LAX	120	10,891.88	412	12,170.32	1,278.44
LOS	79	11,690.45	84	6,058.97	(5,631.48)*
Memphis	41	10,802.20	113	14,579.53	3,777.33
Nashville	31	9,859.61	75	13,403.13	3,543.52
Oklahoma City	22	10,397.83	116	15,625.36	5,227.53
San Francisco	74	13,700.49	32	12,106.44	(1,594.05)*

Source: Records of company.

* City driver earnings exceeded road driver earnings.

17. **Defendants' Exhibit NNN**

Relationship Between Safety Record and Over-the-Road Experience Prior to Employment

Years of Over-the-Road Experience	Best Drivers	Poorest Drivers
0 and under 3	17	37
3 and over	83	63
	100	100

Source: Records of the Company

18. **Defendants' Exhibit PPP**

Excludes Employees Who Earned Under $3,000.00

	City Drivers		Line Drivers		Difference
	=	$	=	$	$
System	1291	$11,780.27	1754	$14,105.73	$ 2,325.46
Atlanta	30	10,757.65	45	15,470.18	4,712.53
Chicago	73	13,431.24	78	19,058.61	5,627.37
Dallas	31	10,676.61	14	16,130.37	5,453.76
Denver	55	12,373.25	312	13,603.67	1,230.42
LAX	92	12,436.39	328	13,553.98	1,117.59
LOS	73	12,117.83	41	8,465.64	3,652.19(City)
Memphis	41	10,802.20	109	14,795.12	3,992.92
Nashville	27	10,485.50	69	14,108.25	3,622.75
Oklahoma City	22	10,397.83	106	16,231.25	5,833.42
San Francisco	72	13,873.11	24	13,717.79	155.32(City)

Source: Records of company

19. **Defendants' Exhibit QQQ**

764

73-2214

AMERICAN EDUCATION

DEFENDANT'S EXHIBIT QQQ

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE • OFFICE OF EDUCATION • NOVEMBER 1971

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TOP DRIVERS MAKE THE GRADE

by JACK JONES

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earns between $300 and $400 a week, reaching the higher figure with the advent of new models and the opportunity it brings him for overtime work. "I'm an affluent member of society now," he says. "I'm a taxpaying homeowner. We bought a nice house in the Inglewood area of Los Angeles."

At 37, Shanklin is a successful graduate of the remarkably effective Transportation Opportunity Program (TOP), launched in Los Angeles in 1967 by the Joint Council of Teamsters No. 42 with money from the Department of Labor and the U.S. Office of Education's Division of Manpower Development and Training. Its goal: to enable the poorly educated jobless—especially blacks and Mexican-Americans—to become licensed drivers in the long restricted but high-paying trucking industry. An estimated 85 to 90 percent of nearly 1,000 graduates of TOP's full-time eight-week driver training program have gone to work, piloting the big diesel rigs that highball along the highways and freeways moving freight, new Detroit automobiles or San Joaquin Valley produce or half a hundred other kinds of loads.

In addition to its daytime training and education program for those who never before could break into an occupation that can pay as much as $20,000 a year, TOP has a part-time evening Upgrade project to help men employed in lower level jobs raise their sights and abilities. Unlike the daytime students, those in the evening classes do not draw MDTA allowances. Yet a warehouseman or the driver of a simple bobtail truck who learns how to handle a 335 Cummins Diesel with a 40-foot van stands to gain much from investing his time. Almost 700 trainees have been through Upgrade, and a follow-up study last year showed that the average increase in earnings was $1,700 a year with some making as much as $5,000 more than before.

TOP was conceived in 1966 by James Peck, Teamsters public relations man, and Fred Schmidt, research director for UCLA's Institute of Industrial Relations, as an inside method to break the discriminatory barriers in trucking. Despite its high aims, the program encountered a few bumps in the road. In some official circles, for example, the project was questioned on the ground that the Teamsters Union was not "a recognized educational institution."

Indeed, it wasn't. But seeing TOP as a unique method of placing trainees in jobs and of upgrading men already at work, the Department of Labor and OE's Manpower Development and Training Division decided to support it as a demonstration project. Thus TOP was jointly funded for a total of some $1.5 million for the first year, with a direct contract for the training being negotiated between the union and the Office of Education, rather than taking the usual route through the State education agency. In 1969 the program received an additional $100,000 in the form of a contribution from the Alliance for Labor Action (composed of the Teamsters and the United Auto Workers). Thus union members were supporting with their dues a program set up to increase the number of skilled truck drivers.

As one observer noted, "It's a strange sight to see a union participating in a program that adds to the number of people in the labor market." Nevertheless, a recently completed study of TOP by Paul Sultan, chairman of the Graduate School of Economics, Associated Colleges of Claremont (California), indicates that the Teamsters-sponsored project is doing just that—and effectively, too. The Sultan study, accomplished with Labor Department funds under contract with the Manpower Center at UCLA's Institute of Industrial Relations, concluded among other things:

- ☐ That the mean income of TOP graduates was $1,461 per year more than that of members of a control group who hadn't been through TOP.
- ☐ That income improvement for TOP trainees is general rather than confined to a few trainees.

Dr. Sultan took a close look at 55 TOP graduates (49 percent blacks, 38 percent Mexican-Americans, and 13 percent Anglos) with a combined arrest history that included felonies, drunk driving, and narcotics violations. In this particular group he found that hourly wage rates increased from an average of $2.07 in the year before TOP training to $3.77 for the year following that training. Also, average annual

Throughout all 50 States and nothing U.S. territories a total of 1.5 million people have been helped toward new and better lives by institutional training programs similar to the Transportation Opportunity Program described in the accompanying article. These programs are authorized by the Manpower Development and Training Act (MDTA) passed by Congress in 1962 as a measure to decrease national unemployment and to increase opportunities for workers in lower level positions to upgrade themselves in their line of work. The Secretary of Labor and the Secretary of Health, Education, and Welfare share the responsibility for administering the programs.

The majority of participating trainees are enrolled in courses related to clerical and sales work and in the machine and building trades; but as exemplified by TOP, training is offered across a wide spectrum of occupations. Moreover, since the needs of many trainees extend back beyond occupational skills to basic education, elementary courses in communications and mathematics are interwoven through a number of the programs.

Federal funds for the support of MDTA projects are provided in two ways. Approximately 80 percent of the money allocated for this purpose is turned over to federally approved State vocational agencies for disbursement. The remaining 20 percent is distributed directly by Federal agencies for use in national programs. For further information, write to Howard Matthews, Director, Division of Manpower Development and Training, U.S. Office of Education, Washington, D.C. 20202.

A neat rope trick is lashing on a load quickly and securely.

earnings jumped from $2,431 during the year prior to training to $6,062 for the year after training. The gain? A whopping 149 percent.

Another aspect of TOP's success is underscored by Clarence H. Featherson, Director of the Office of Equal Employment and Compliance for the U.S. Postal Service and, as such, the official responsible for equal employment studies of the entire trucking industry. As a direct result of TOP, Featherson says, Los Angeles is "one of the bright spots in trucking for blacks." Recent economic troubles undoubtedly have had their effect, and not all those minority drivers placed after their TOP training may still be working. Featherson nevertheless says that the situation in Los Angeles today is a good deal different from that cited in Richard D. Lesser's 1965 report on "The Negro in the Trucking Industry" (part of the "Racial Policies of American Industry" series) which showed that of 11,563 trucking industry employees in Los Angeles, only 570 were black. Of the 570, only 76 were drivers, the remainder holding such lesser jobs as warehousemen, loaders, and general laborers.

TOP is run by an independent board of directors chaired by Pete Kurbatoff, president of Joint Council No. 42, and including Teamster leaders, minority community figures, and trucking industry executives. Its classrooms and certain on-truck training facilities are located in a 30,000-square-foot former electronics plant in Pico Rivera, a Los Angeles suburb abounding with warehouses and trucking firms.

Much of the learning occurs out on the highways. Teamster instructors, old pros with million-mile safety records, preside over groups of eight trainees riding with them in large diesel rigs each modified to accommodate a small "classroom" just behind the driver's seat. There the students can follow each move as their instructor wheels the tractor and its 40-foot van (chosen loaded with 30,000 pounds of canned water) through the complex shifting of gears entailed in crawling up some intimidating grades like the Ridge Route, the long steep highway that leads out of the Los Angeles Basin to the agricultural valley of central California. Trainees get their first "hands on the wheel" road driving experience on the paved bottom of the Los Angeles River, bone-dry most of the

Closer, these TOP instructors—they use the concrete bed of the Los Angeles River to teach the fundamentals of driving a truck.

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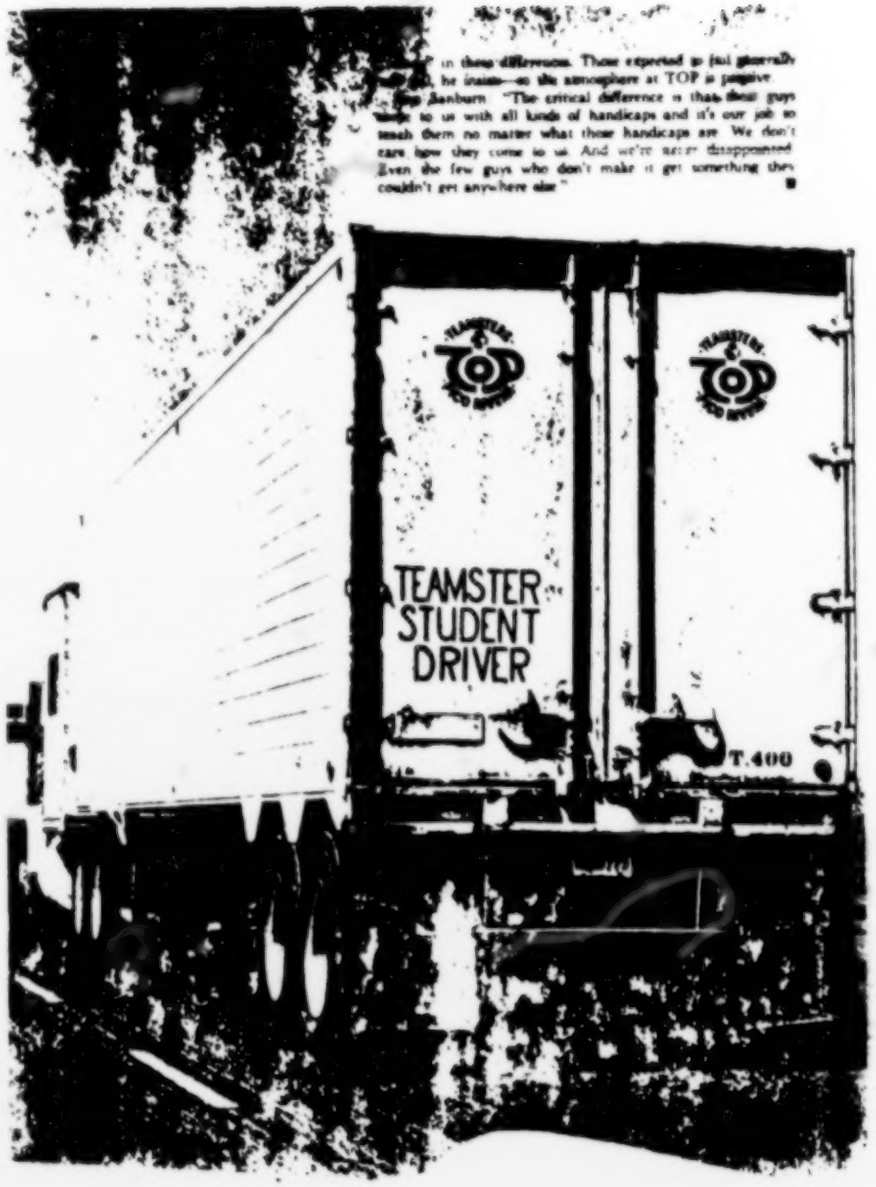
in these differences. Those expected to fail generally
, he insists—so the atmosphere at TOP is positive.
Jane Jamburn. "The critical difference is that these guys
to us with all kinds of handicaps and it's our job to
teach them no matter what those handicaps are. We don't
care how they come to us. And we're never disappointed.
Even the few guys who don't make it get something they
couldn't get anywhere else."



20. Defendants' Exhibit RRR

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DEFENDANT'S EXHIBIT RRR

TED MERRILL - BOARD CHAIRMAN
DONALD D. SANBURN - DIRECTOR

TRANSPORTATION OPPORTUNITY PROGRAM, INC.

7777 INDUSTRY AVENUE, PICO RIVERA, CALIFORNIA 90660 TELEPHONE 723-0771 · 692-0591

BOARD OF DIRECTORS

EXECUTIVE COMMITTEE

MEMBERS OF THE BOARD

OFFICERS

ETHNIC BREAKDOWN OF GRADUATES IN ENTRY PROGRAM

FROM: October 30, 1967
TO: May 12, 1972

CAUCASIANS:	291 ---	24%
BLACKS:	562 ---	43%
MEXICAN-AMERICANS:	381 ---	29%
OTHER:	56 ---	4%
TOTAL:	1,292 ---	100%

ETHNIC BREAKDOWN OF GRADUATES IN UPGRADER PROGRAM

FROM: October 30, 1967
TO: May 12, 1972

CAUCASIANS:	553 ---	54%
BLACKS:	141 ---	13%
MEXICAN-AMERICANS:	309 ---	30%
OTHER:	13 ---	3%
TOTAL:	1,016 ---	100%

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21. DEFENDANT'S EXHIBIT SSS

Selected Terminals With Minorities Shown by Union Local

Terminal & Local Union	Total Emp.	Negroes	SSA	Other	All
SFO					
% of Population		10.6%	6.4%	6.6%	23.6%
Local 70	119	8-6.7%	21-17.7%	1-0.8%	30-25.2%
Local 468	31				
Local 78	8	1-12.5%			1-12.5%
Local 856	22				
1546 I.A.M.	8		3-37.5%	1-12.5%	4-50.0%
SAT					
% of Population		6.9%	37.4%	1.1%	45.4%
Local 657	15	1-6.7%	12-80.0%		13-86.7%
OKC					
% of Population		8.5%	N/A	2.4%	10.9%
850 I.A.M.	42	1-2.4%		1-2.4%	2-4.8%
Local 886	202	9-4.5%	3-1.5%	1-0.5%	13-6.4%
MFS					
% of Population		37.5%	N/A	0.3%	37.8%
Local 667	311	47-15.1%	0	0	47-15.1%
NAS					
% of Population		17.8%	N/A	0.3%	18.1%
Local 480	258	20-7.8%	0	0	20-7.8%
DAL					
% of Population		16.0%	3.4%	0.8%	20.2%
Local 745	101	18-17.8%	1-1.0%		19-18.8%

Terminal & Local Union	Total Emp.	Negroes	SSA	Other	All
DEN					
% of Population		4.1%	6.5%	1.4%	11.9%
Local 17	143	10-7.0%	17-11.9%	1-0.7%	28-19.6%
Local 710	322	6-1.9%	2-0.6%	2-0.6%	10-3.1%
(961 Line)					
Local 961	52	23-44.2%	2-3.9%	2-0.6%	10-3.1%
I.A.M. 86	52	2-3.8%	2-3.8%	1-1.9%	5-9.6%
AFL-CIO 5	58	0			
ATL					
% of Population		22.4%	N/A	0.2%	22.6%
Local 728	117	21-17.9%			21-17.9%
I.A.M. 46	9	0	0	0	0
CHI					
% of Population		17.6%	N/A	1.1%	18.7%
Local 705	91	4-4.4%	1-1.1%	0	5-5.5%
Local 710	238	2-0.8%	7-2.9%	1-0.4%	10-4.2%
I.A.M. 701	36	2-5.6%	0	0	2-5.6%
Local 189	6	5-83.3%	0	0	5-83.3%
LOS-LAX					
% of Population		10.8%	9.3%	3.7%	23.9%
Local 208	188	24-12.8%	38-20.2%	3-1.6%	65-34.6%
Local 357	272	51-18.8%	57-21.0%	13-4.8%	121-44.5%
Local 180	395	5-1.3%	2-0.5%	2-0.5%	9-2.3%
Local 495	51	12-23.5%	11-21.6%	0	23-45.1%
I.A.M. 1186	46	4-8.7%	6-13.0%	1-2.2%	11-23.9%
ALB					
% of Population		3.3%	N/A	0.4%	3.7%
Local 294	26	0	0	1-3.8%	1-3.8%
NOB					
% of Population		16.3%	N/A	1.7%	18.0%
Local 641	189	4-2.1%	3-1.6%	0	7-3.7%

Terminal & Local Union	Total Emp.	Negroes	SSA	Other	All
NYC					
% of Population		16.3%	N/A	1.7%	18.0%
Local 560	68	1-1.5%	2-2.9%	1-1.5%	4-5.9%
ILA 1730	36	0	0	0	0
ELP					
% of Population		3.1%	43.6%	1.1%	47.8%
Local 941	59	0	38-64.4%	0	38-64.4%
KCY					
% of Population		12.1%	N/A	0.6%	12.7%
Local 41	79	0	0	1-1.3%	1-1.3%
I.A.M. 778	3	0	0	0	0
Local 552	2	0	1-50.0%	0	1-50.0%
KNX					
% of Population		7.2%	N/A	0.3%	7.5%
Local 519	97	5-5.2%	0	0	5-5.2%
PHX					
% of Population		3.4%	11.9%	2.1%	17.4%
Local 104	90	5-5.6%	6-6.7%	2-2.2%	13-14.4%
Local 274	3	2-66.6%	0	0	2-66.6%
I.A.M. 519	2	0	0	0	0
SEA					
% of Population		2.9%	N/A	3.0%	5.9%
Local 741	221	2-0.9%	0	4-1.8%	6-2.7%
Local 44	18	1-5.6%	0	1-5.6%	2-11.2%
Local 154	36	0	1-2.8%	0	1-2.8%
I.A.M. 289	35	0	1-2.9%	0	1-2.9%
STL					
% of Population		16.0%	N/A	0.4%	16.4%
Local 600	116	2-1.7%	0	0	2-1.7%
Local 688	16	0	0	0	0
I.A.M. 9	0				
Local 618	5	0	0	0	0

Terminal & Local Union	Total Emp.	Negroes	SSA	Other	All
WIN					
% of Population		8.9%	N/A	0.1%	9.0%
Local 539	201	0	0	4-2.0%	4-2.0%
POR					
% of Population		2.3%	N/A	1.5%	3.8%
Local 81	157	0	1-0.6%	0	1-0.6%
Local 255	10	1-10.0%	0	0	1-10.0%
Local 223	25	0	0	2-8.0%	2-8.0%
I.A.M. 1005	8	0	0	0	0

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22. DEFENDANT'S EXHIBIT TTT

January 21, 1972

PROPOSED RESOLUTION
NEGOTIATED TRAINING FUNDS

Whereas, the new Department of Transportation regulations concerning highway safety are now beginning to affect our members, and

Whereas, the health and safety of our membership has always been one of our prime considerations, and

Whereas, training programs can become an effective tool to promote better highway safety, as well as to increase employee productivity, and

Whereas, the more sophisticated equipment being used in our industries requires more training for entry jobs, and

Whereas, the Teamster's Transportation Opportunity Program in Los Angeles has demonstrated the feasibility of training programs, and

Whereas, many of our most experienced long-line drivers will be retiring in the next five years, and we should help to provide upgrader training to allow present members to qualify for these future openings, and

Whereas, most companies with whom Teamsters have contracts are becoming more aware of the need for training, while governmental funds to support training are becoming more scarce, and

Whereas, under the present wage-price stabilization program, it may be necessary to find alternative ways of providing employee benefits other than through direct wage payments, therefore

Be It Resolved that the Western Conference of Teamsters does hereby adopt a policy to encourage negotiation of training funds in any Teamster contracts, where feasible, in order to provide training for entry workers and upgrading training for present members.

Supreme Court, U. S.
FILED
FEB 17 1976
MICHAEL RODAK, JR., CLERK

Nos. 75-636 and 75-672

In the Supreme Court of the United States

OCTOBER TERM, 1975

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
PETITIONER

v.

UNITED STATES OF AMERICA AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

T.I.M.E.-D.C., INC., PETITIONER

v.

UNITED STATES OF AMERICA AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
J. STANLEY POTTINGER,
Assistant Attorney General,
DAVID L. ROSE,
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ABNER W. SIBAL,
General Counsel,
Equal Employment Opportunity Commission,
Washington, D.C. 20506.

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Miscellaneous:
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Note, *Title VII, Seniority Discrimination, and the Incumbent Negro*, 80 Harv. L. Rev. 1260 (1967) ---- 18

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75–636

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETITIONER

v.

UNITED STATES OF AMERICA AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

No. 75–672

T.I.M.E.–D.C., INC., PETITIONER

v.

UNITED STATES OF AMERICA AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1–44)[1] is reported at 517 F. 2d 299. The final order of

[1] "Pet. App." references are to the petition in No. 75–636.

the district court (Pet. App. 94–116) and the order of the district court amending its final order (Pet. App. 117–118) are unreported. Opinions of the district court are set forth at Pet. App. 45–49, 50–55, 56–78, and 79–84. The district court's decree in partial resolution of the suit is set forth at Pet. App. 85–93.

JURISDICTION

The judgment of the court of appeals was entered on August 8, 1975. A timely petition for a writ of certiorari was filed in No. 75–636 on October 29, 1975, and in No. 75–672 on November 6, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court and the court of appeals correctly found, on the basis of statistical evidence and extensive pretrial and trial testimony concerning individual acts of discrimination, that T.I.M.E.–D.C. had engaged in a pattern of discriminatory employment practices against blacks and Spanish-surnamed persons in violation of Title VII of the Civil Rights Act of 1964.

2. Whether the court of appeals correctly ruled that a company seniority system that penalizes employees who transfer from one job classification to another perpetuates the effects of a pattern of exclusion of blacks and Spanish-surnamed employees from higher paying, more attractive, traditionally white jobs, in violation of Title VII.

3. Whether the court of appeals correctly ruled that a company seniority system that perpetuates discrimination in violation of Title VII should be temporarily modified to permit members of the class of blacks and Spanish-surnamed employees who qualified for the better paying jobs but were assigned to less desirable, lower paying jobs because of their race and national origin to transfer to and compete for the traditionally white jobs on the basis of their seniority with the company, rather than on the basis of seniority in the traditionally white job.

4. Whether the court of appeals correctly ruled that the International Brotherhood of Teamsters is an adequate representative of the seniority interests of its members and that the local unions are not indispensable parties to this litigation.

STATUTE INVOLVED

Relevant provisions of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, 86 Stat. 103, 42 U.S.C. (Supp. IV) 2000e, *et seq.*, are set forth at Pet. App. 119–124.

STATEMENT

These petitions arise out of two cases brought by the United States [2] against T.I.M.E.–D.C. (and its prede-

[2] Pursuant to Section 707(d) of the Equal Employment Opportunity Act of 1972, 42 U.S.C. (Supp. IV) 2000e–6(d) (Pet. App. 124), the Equal Employment Opportunity Commission became a party to this litigation after the cases had been argued in the court of appeals. By order of the court of appeals, the United States remained a party.

cessor, T.I.M.E. Freight, Inc.), a common carrier by motor freight, under Section 707 of the Civil Rights Act of 1964, as amended, 42 U.S.C. (Supp. IV) 2000e-6 (Pet. App. 122), alleging a pattern of employment practices that discriminated against blacks and Spanish-surnamed persons on the grounds of race and national origin. The first suit, charging petitioner T.I.M.E.–D.C. with a pattern and practice of discrimination at its Nashville terminal, was filed on May 15, 1968, in the Middle District of Tennessee and named Local 480 of the Teamsters as a defendant. The second suit, against T.I.M.E.–D.C. and the International Brotherhood of Teamsters, was filed on January 14, 1971, in the Northern District of Texas and challenged the employment practices throughout T.I.M.E.–D.C.'s operations, which include 51 terminals in 26 states (Pet. App. 3–5). The two cases were consolidated and trial was held in May 1972 (Pet. App. 8).

1. *The facts.* Many of the facts were stipulated, and the remainder either were undisputed or were found by the district court and sustained by the court of appeals.

Petitioner T.I.M.E.–D.C. is an interstate common carrier operating a motor freight system from coast to coast, with headquarters in Lubbock, Texas. Is is a product of approximately 10 mergers over a 17- year period. Nonmanagerial employees of the company represented by the Teamsters are divided into four bargaining units—line (or road), city, garage, and clerical (Pet.

App. 5–6). Line drivers generally earn more per year than city employees (in 1969, an average of from $1,300 to $4,700 more), and the line driver job is generally considered more desirable, because of both the higher pay and the fact that city drivers have to unload their own trucks (Pet. App. 6, n. 7, 59; Pl. Ex. 231; Pl. Ex. 230). Moreover, T.I.M.E.–D.C.'s major terminals employing line drivers are located in metropolitan areas of substantial minority population, such as Los Angeles, Memphis, Denver, Nashville, Oklahoma City, Chicago and Atlanta (Pet App. 18–19, 68–72).

As of March 31, 1971, T.I.M.E.–D.C. had 6,472 employees, of whom 314 (5%) were black and 257 (4%) were Spanish-surnamed American. An overwhelming majority of the black (83%) and of the Spanish-surnamed American (78%) employees, however, were concentrated in city (city driver, dockman and hostler), garage (serviceman and tireman) and janitor jobs, while the large majority of the white employees were in line driver, office, and supervisory jobs (Pet. App. 18, 21, n. 24). For example, as of March 31, 1971, T.I.M.E.–D.C. had 1,828 employees in the position of line driver, of whom only 8 (0.4%) were black and only 5 (0.3%) were Spanish-surnamed. When the government's first suit was filed in May 1968, T.I.M.E.–D.C. had no black line drivers; the first employed by the company was hired in 1969 (Pet. App. 19). Indeed, with the exception of one driver at the Chicago terminal during the 1950's, no black had ever

been employed prior to 1969 on a regular basis as a line driver by T.I.M.E.–D.C. or any of its predecessor companies (Pet. App. 19–21).

Numerous experienced and qualified black and Spanish-surnamed truck drivers had applied for line driver positions and had their requests ignored, or were denied employment after being given false and misleading information about requirements, opportunities and application procedures (Pet. App. 60–61). Many other black and Spanish-surnamed city drivers who met the qualification standards and sought transfer to a line driver position were either denied the opportunity to do so or were not allowed to transfer on the same basis as white employees (Pet. App. 61). At the Nashville terminal—the subject of the initial Title VII action—blacks were employed only as servicemen (which pays less than dockmen, hostler, city driver, partsman and mechanic) until April 1968, and the company did not train blacks to be mechanics, partsmen or shop supervisors (Pet. App. 21–22, 61; Pl. Exs. 66, 204).

Petitioner International Brotherhood of Teamsters ("Teamsters") is a highly centralized international union (Pet. App. 17). The constitution of the Teamsters confers on the General Executive Board authority to interpret and apply the constitution and to decide all questions of law (subject to appeal at the next Convention) and grants it "governing authority over the International Union and its subordinate bodies" (Appendix, *infra,* p. 1A). Each Area Conference of the Teamsters (Eastern, Southern, Western

and Central) is a subordinate body of the International and is "subject to the unqualified supervision, direction and control of the General President" (Appendix, *infra,* p. 2A). Moreover, it is compulsory for every local union of the Teamsters to accept a transfer of a union member from another local union without additional charge (Appendix, *infra,* pp. 1A–2A).

The bylaws of each local union are subject to the approval of the General President, who also has the power to place a local union into trusteeship if he believes that the local is not being operated for the benefit of the membership (Appendix, *infra,* pp. 6A–7A); and if a majority of local unions vote to hold area, national or industry-wide negotiations, all involved local unions "must participate" and "shall be bound" by the contract, if approved by the "membership covered by said contract proposal" (Appendix, *infra,* p. 3A).

All of T.I.M.E.–D.C.'s line drivers, and the vast majority of its city employees and servicemen, work under a National Master Freight Agreement that is negotiated every three years on a nationwide basis by the National Over-the-Road and City Cartage Policy and Negotiating Committee of the Teamsters, whose members are appointed by the General President of the International. Each local union gives the Committee a power of attorney to negotiate on its behalf (Pet. App. 17). Regional supplements to the National Master Freight Agreement are negotiated at the same time and place, and the National Agreement and the area supplements are subject to acceptance by a nationwide majority vote of Teamsters affected (Pet.

App. 17). Although the local unions, rather than the International, sign the National Master Freight Agreement and the area supplements, such signing has little significance, since under the constitution the collective bargaining agreement is binding on all involved locals and their members as soon as it is approved by a majority of the members voting (even if disapproved by majority vote of a particular local) (Appendix, *infra*, pp. 3A–4A).

The collective bargaining agreements in effect at all material times provided for separate area and local supplements for each of the four bargaining units—line (or road drivers), city, garage, and clerical. Seniority is maintained separately within each unit (Pet. App. 6, 7). While nothing in the collective bargaining agreements prohibits the transfer of an employee from one unit to another, an employee who transfers maintains his company seniority only for fringe benefits (such as vacation rights) and is treated for purposes of layoffs and other bidding as a new employee in the transferee unit (Pet. App. 7). Thus, if a city driver, dockman or serviceman transferred to a line driver position, he would lose all of his previously earned seniority for layoff and other bidding purposes and would accrue such seniority only from the date he began work as a line driver (Pet. App. 7).

2. *The district court's decision.* Prior to trial, the Teamsters moved to dismiss or for a stay on the ground that the local unions were signatory parties to the collective bargaining agreements in question and hence were necessary parties to the litigation.

T.I.M.E.–D.C. also moved to dismiss on the ground of failure to join the locals as indispensable parties.[3] After determining that the Teamsters actively control the negotiations and terms of the collective bargaining agreements, the district court denied the motions, holding that ample relief could be afforded in a decree running against the Teamsters (Pet. App. 52–53).

After trial but prior to the court's decision, the government and T.I.M.E.–D.C. entered into a consent decree in partial resolution of suit, which was submitted to and approved by the district court on May 12, 1972 (Pet. App. 85–93). The consent decree, which admitted no liability, required T.I.M.E.–D.C. to undertake a recruitment campaign aimed at the black and Spanish-surnamed communities, set out minimum qualification standards for the major job classifications, and, subject to the availability of qualified applicants, provided for the hiring of blacks and Spanish-surnamed Americans in the ratio of one for one (50%) until the percentage of such minorities in each classification equaled the percentage of black and Spanish-surnamed Americans in the work force in the relevant city or Standard Metropolitan Statistical Area. T.I.M.E.–D.C. also was required to pay $89,500

[3] The United States then sought to add Local 745 of Dallas as an additional defendant individually and as representative of the class of local unions. The court allowed the government to join Local 745 as an individual defendant but not as a class representative (Pet. App. 48–49). The United States declined to add the local individually or to proceed against individual locals in other parts of the country. No local union moved to intervene to represent its interests.

in settlement of back pay claims of alleged individual and class discriminatees, and $5,000 in cost of depositions (Pet. App. 90–92).

The only issues remaining for resolution by the district court after the consent decree concerned whether there had been a pattern and practice of discrimination in T.I.M.E.–D.C.'s operations and, if so, whether and to what extent seniority and transfer rights of incumbent black and Spanish-surnamed employees should be affected. On the basis of statistical analysis and extensive evidence from live witnesses and depositions, the district court found that defendant T.I.M.E.–D.C. and its predecessors had engaged in a pattern and practice of discrimination in violation of Title VII and that the seniority provisions of the collective bargaining agreements, while neutral on their face, operated to perpetuate the effect of these prior discriminatory practices by impeding the free transfer of minority employees to the more desirable jobs (Pet. App. 61).

The court then turned to the question of remedy. Subsequent to trial, at the court's request, the government had submitted a list of more than 300 incumbent black and Spanish-surnamed employees hired prior to March 1971, who were in its view entitled to transfer to traditionally white jobs without losing their accumulated seniority, provided they were qualified and desirous of transferring (Pet. App. 12, 16). The court ruled that while all persons listed by the

government were members of the class affected by T.I.M.E.–D.C.'s discriminatory practices, not all class members had offered specific evidence of injury. Therefore, the court allowed only 29 incumbent employees, as to whom "the evidence clearly show[ed] * * * discrimination in the hiring and promotional practices of defendant T.I.M.E.–D.C." (Pet. App. 73; see also Pet. App. 63, 75), to transfer to line driver or other traditionally white positions, as vacancies occurred, with seniority in that unit dating back no further than July 2, 1965 (the effective date of Title VII).

Four other incumbent employees were granted retroactive seniority only to January 14, 1971 (the date of filing the systemwide pattern and practice suit against T.I.M.E.–D.C.), because the evidence regarding them showed "that these individuals were very possibly the objects of discrimination" and that they were likely harmed by such discrimination but was "not sufficient to show clear and convincing specific instances of discrimination" or harm resulting therefrom (Pet. App. 77). The remainder of the more than 300 discriminatees was granted priority in hiring (if qualified), but not retroactive seniority (Pet. App. 65).

3. *The decision of the court of appeals.* The government, the Teamsters and T.I.M.E.–D.C. appealed. On petitioners' appeal, the court of appeals agreed with the district court that the local unions were not indispensable parties because the International plays a

major role in the negotiation of the collective bargaining agreements while the locals play little if any meaningful role and because the International adequately represents the seniority status of its members (Pet. App. 16–18). The court of appeals ruled in addition that the district court's findings of a pattern and practice of discrimination were not clearly erroneous, because the statistical evidence, plus the massive amount of testimony presented at trial as well as by depositions,[1] were sufficient to sustain the district court's conclusions (Pet. App. 18–29).

Furthermore, in accord with a line of cases dating from *Local 189, United Papermakers & Paperworkers* v. *United States*, 416 F. 2d 980 (C.A. 5), certiorari denied, 397 U.S. 919, the court of appeals ruled that a seniority system that tended to keep blacks and Spanish-surnamed persons in the jobs to which they had been discriminatorily assigned was unlawful, and that the employer and union were obliged to permit all such qualified persons to transfer to traditionally white jobs (such as line driver) with the seniority they had earned in their prior jobs, and to use that seniority in later bidding for promotion, layoff and other competition, subject only to the proviso that such persons should not obtain a seniority date earlier than that on which they were first qualified for the new position (Pet. App. 30–35).

[1] In addition to the witnesses who testified at trial, the government introduced the testimony of over 90 witnesses through depositions or summaries of depositions (Pet. App. 8).

ARGUMENT

The decisions of both courts below that the government proved a pattern of discriminatory employment practices and that the International Brotherhood of Teamsters was an adequate representative of the seniority interests of its members are extensively supported by the record in this case and are in accord with well settled principles of law and the decisions of other courts of appeals. On the seniority issues, too, the decision of the court of appeals is in accord with the accepted principle of "rightful place" for incumbent minority employees assigned to low paying or otherwise undesirable jobs on the basis of race and national origin. That principle has been adopted by all the circuits that have been faced with such seniority issues. Review by this Court, therefore, is not warranted.

1. Based upon the facts that T.I.M.E.–D.C. had no black line drivers until 1969 and that as of March 31, 1971 (two months after suit was filed) it had only eight blacks (0.4%) and five Spanish-surnamed Americans (0.3%) among its 1,828 line drivers, as well as a massive amount of testimony concerning individual acts of discrimination, the district court correctly found that T.I.M.E.–D.C. had followed a pattern of excluding blacks and Spanish-surnamed Americans from traditionally white jobs (such as line drivers); the court of appeals properly sustained that finding. Similar findings of discrimination, and in particular the exclusion of minorities from line driver

positions, have been made and sustained in every appellate decision on the merits we have found concerning a carrier in the trucking industry, as well as in a host of district court decisions in that industry.[5]

Concurrent findings of two lower courts are considered final by this Court in the absence of a very exceptional showing of error, *Comstock* v. *Group of Institutional Investors,* 335 U.S. 211, 214, and there has been no such showing in this case. Petitioners principally attack the reliance by the courts below upon employment statistics as of March 1971, and refer instead to progress made in minority hiring in 1972 and 1973. But these suits were filed in May 1968 and January 1971, and the courts should "beware of efforts to defeat injunctive relief by protestations of repentence and reform, especially when abandonment seems timed to anticipate suit." *United States* v. *Oregon Medical Society,* 343 U.S. 326, 333. The courts below therefore properly looked to the time of filing suit as relevant in determining liability. See Pet. App. 28 and cases there cited. In any event, the government sought and the court below granted seniority relief only for blacks and Spanish-surnamed Americans hired prior to March 1971—at a time when the

[5] See Teamsters Pet. 16, n. 26. See also *United States* v. *Navajo Freight Lines, Inc.*, 525 F. 2d 1318 (C.A. 9); *United States* v. *Roadway Express, Inc.*, 457 F. 2d 854 (C.A. 6) (sustaining consent decree entered after trial commenced). Use of statistical data to help establish liability in employment discrimination cases has been the consistent practice of the lower courts. See Pet. App. 23, n. 27.

existence of T.I.M.E.–D.C.'s exclusionary practices was clear (Pet. App. 12).[6]

Petitioners also attack the refusal of the court of appeals to apply the four analytical steps outlined by this Court in *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792, 802. But as this Court noted in *Green,* while those steps may be useful in determining whether discrimination exists in an individual case, they are by no means exclusive even in such cases. 411 U.S. at 804–805. Moreover, in a case involving an employer's general policy and practice with respect to minority employment, the courts need not engage in an exhaustive case-by-case analysis of the treatment of each minority employee. Indeed, this Court explicitly commented in *Green* that statistics as to a company's employment policy may be extremely significant in a "pattern and practice" suit. 411 U.S. at 805. Here, of course, the strong statistical evidence of T.I.M.E.–D.C.'s discriminatory policies was buttressed by a "massive amount" (Pet. App. 24) of testimony concerning individual discriminatory acts.

2. Petitioners also challenge the court of appeals' ruling that T.I.M.E.–D.C.'s minority employees are entitled to use their pertinent accumulated seniority in bidding for jobs from which they had been unlawfully excluded in the past. However, in the context

[6] In addition, petitioners' reliance upon hiring statistics in 1972 and 1973 is misplaced because much of the progress in those years was undoubtedly a result of the partial consent decree entered on May 12, 1972. See Pet. App. 28, n. 31, 85–93.

of a historical practice of excluding blacks and other minorities from better paying, more desirable, traditionally white jobs, a seniority system that requires those minorities to lose their accumulated seniority if they seek to transfer to a more desirable job necessarily perpetuates the effects of past discrimination. As the court of appeals observed (Pet. App. 24), "the minority employees were locked-in to the positions where they were initially discriminatorily assigned since they would be forced to forfeit their extensive accumulated seniority for bidding and layoff purposes upon transfer to the road." For this reason, every court of appeals that has considered the issue has ruled that such a seniority system must be modified in order for full relief under Title VII to be granted.[7] Furthermore, in the specific context of the trucking industry, the federal courts have consistently held that to the extent that the "unit seniority" provisions of the National Master Freight Agreement and its conference and area supplements con-

[7] See, *e.g.*, *United States* v. *Navajo Freight Lines, Inc.*, *supra*; *Head* v. *Timken Roller Bearing Co.*, 486 F. 2d 870 (C.A. 6); *United States* v. *N. L. Industries, Inc.*, 479 F. 2d 354 (C.A. 8); *United States* v. *Bethlehem Steel Corp.*, 446 F. 2d 652 (C.A. 2); *Robinson* v. *Lorillard Corp.*, 444 F. 2d 791 (C.A. 4); *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (C.A. 7); *Local 189, United Papermakers & Paperworkers* v. *United States*, 416 F. 2d 980 (C.A. 5), certiorari denied, 397 U.S. 919. See also *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 409.

tinue the effects of past discrimination, they are unlawful.[8]

The correctness of these decisions is apparent. The congressional purpose behind the grant of remedial authority to the courts under Title VII, as expressed in the Section-by-Section Analysis of the 1972 Amendments to the Civil Rights Act, was to restore discriminatees "to a position where they would have been were it not for the unlawful discrimination." 118 Cong. Rec. 7565 (1972). The district courts were therefore authorized under Section 706(g) of the Act, as amended, 42 U.S.C. (Supp. IV) 2000e–5(g), to enjoin unlawful discriminatory practices and to "order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay * * *, or any other equitable relief as the court deems appropriate." Since, as the Teamsters freely concede (Pet. 19), seniority is one of the trucking industry employee's most precious possessions, courts necessarily must be permitted in an appropriate case to fashion a remedy involving retroactive seniority if they are to ensure that victims of past discrimination will be

[8] See, *e.g.*, *Hairston* v. *McLean Trucking Co.*, 520 F. 2d 226 (C.A. 4); *Sabala* v. *Western Gillette, Inc.*, 516 F. 2d 1251 (C.A. 5); *Thornton* v. *East Texas Motor Freight*, 497 F. 2d 416 (C.A. 6); *United States* v. *Navajo Freight Lines, Inc.*, *supra*; *United States* v. *Central Motor Lines, Inc.*, 338 F. Supp. 432 (W.D. N.C.).

restored to their "rightful place" in the company. The court below thus properly concluded that the discriminatees in this case were entitled to relief against T.I.M.E.–D.C.'s job classification seniority system.

The question of appropriate relief under Title VII from a seniority system that discriminates in effect if not by design has been before the courts frequently since 1968. With surprisingly little deviation, the courts have followed the "rightful place" doctrine and have held that minority employees who were assigned to the lower paying, less desirable jobs because of their race or national origin have the right, if they are qualified and desire to do so, to transfer to (when a vacancy occurs) and compete for the traditionally white jobs on the basis of their seniority with the company at the plant, rather than within the traditionally white unit. See, *e.g., Local 189, United Paper-makers & Paperworkers* v. *United States, supra,* and other cases cited p. 16, nn. 7, 8, *supra.* See also Note, *Title VII, Seniority Discrimination, and the Incumbent Negro,* 80 Harv. L. Rev. 1260 (1967).

In the trucking industry, the same principles have been followed and the same relief generally has been granted, although with respect to companies that have regularly required prior truck driving experience for a line driver position, the transferring minority employee who did not have such experience when hired has been held entitled to seniority dating from the time

he met that qualification.[9] See *Rodriguez* v. *East Texas Motor Freight,* 505 F. 2d 40 (C.A. 5); *Franks* v. *Bowman Transportation Co.,* 495 F. 2d 398 (C.A. 5), pending on writ of certiorari on another issue, No. 74–728; *Bing* v. *Roadway Express, Inc.,* 485 F. 2d 441 (C.A. 5); *Sabala* v. *Western Gillette, Inc., supra; Hairston* v. *McLean Trucking Co., supra; United States* v. *Navajo Freight Lines, Inc., supra; United States* v. *Central Motor Lines, Inc., supra.* The relief accorded by the court of appeals is fully consistent with these decisions.

Petitioners assert a conflict between *Thornton* v. *East Texas Motor Freight,* 497 F. 2d 416 (C.A. 6), and the decision below. In *Thornton,* a majority of a panel of the Sixth Circuit affirmed a district court order that limited seniority relief to those black employees who protested the company's restrictive prac-

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[9] Since T.I.M.E.–D.C. had no uniform systemwide experience requirement for line drivers, the court of appeals remanded to the district court to devise standards for determining qualification dates for discriminatees (Pet. App. 32).

T.I.M.E.–D.C. also challenges (Pet. 15–16) the right of minority employees in the affected class to use seniority accumulated in the less desirable jobs to bid for vacancies against white employees on layoff status in the traditionally white jobs. However, after determining that minority employees had been discriminated against and that the company and union layoff rules would "unduly impede the eradication of past discrimination" (Pet. App. 41), the court of appeals appropriately chose a remedy to place the discriminatees in their rightful place. See, *e.g., United States* v. *C & O Ry. Co.,* 471 F. 2d 582 (C.A. 4); *United States* v. *Jacksonville Terminal Co.,* 451 F. 2d 418, 450–451 (C.A. 5).

tices either by requesting a transfer or by filing a charge with the Equal Employment Opportunity Commission. 497 F. 2d at 419–421. Although that result is contrary to the decision of the court of appeals in the present case and the holdings in the other trucking industry cases cited above, the majority in *Thornton* did not apply a contrary principle of seniority relief. Indeed, the *Thornton* court expressly purported to follow the "rightful place" doctrine as enunciated by the Fifth Circuit. 497 F. 2d at 419–420. The governing consideration in the majority opinion in *Thornton* apparently was the extent of deference due to the discretion of the trial judge in fashioning relief. In its three-page discussion of the seniority remedy (as in its discussion of back pay), the court of appeals referred at least three times to the district court's discretion, and concluded by stating that the district court had not abused its discretion in fashioning the seniority remedy. 497 F. 2d at 419–421. Similarly, Chief Judge Phillips in his dissenting opinion in *Thornton* (497 F. 2d at 427) relied upon the Fourth Circuit's decision in *Moody* v. *Albemarle Paper Co.*, 474 F. 2d 134, vacated and remanded on other grounds, 422 U.S. 405, for the proposition that too much deference had been given to the discretion of the trial court.

While we agree with Chief Judge Phillips' dissenting opinion as to the remedy that should have been afforded in *Thornton*, any error of the majority was

due, we believe, to excessive deference to the discretion of the district court in fashioning relief.[10] In any event, subsequent to *Thornton* the Sixth Circuit has adopted the "rightful place" doctrine interpreted by the Fifth Circuit in *Local 189, United Papermakers & Paperworkers* v. *United States, supra,* and the decision below. In *Equal Employment Opportunity Commission* v. *Detroit Edison Co.*, 515 F. 2d 301 (C.A. 6), pending on petitions for a writ of certiorari, Nos. 75–220, 75–221, 75–239, and 75–393, the court unanimously held that black employees hired and assigned to less desirable jobs pursuant to a practice of discrimination generally should be given plant-wide seniority for bidding and promotion within traditionally white jobs and departments and, citing the dissenting opinion in *Thornton*, that such seniority should be "available regardless of whether an employee actually sought a transfer previously." 515 F.2d at 316. Therefore, any conflict between the Sixth Circuit and other circuits on this issue has been resolved.[11]

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[10] This Court, in the interim, has addressed the issue of the extent of deference that an appellate court should give to a district court in Title VII cases. *Albemarle Paper Co.* v. *Moody*, *supra*, 422 U.S. at 415–422.

[11] Moreover, the majority of black employees of the East Texas Motor Freight Company, including many of the those employed at the Memphis terminal that was a subject of the *Thornton* case, were awarded full seniority carryover of the kind contemplated in the present case in *United States* v. *East Texas Motor Freight*, 10 FEP Cases 971 (N.D. Tex.).

3. Finally, the Teamsters contend that the court below erred in affirming the district court's refusal to dismiss the suit with regard to seniority relief on the ground that the local unions of the Teamsters were indispensable parties to the litigation (Pet. 28–31). The local unions, of course, are signatories to the collective bargaining agreements. But as noted above, see pp. 7–8 *supra*, the National Master Freight Agreement and the conference and area supplements are negotiated nationally by a Negotiating Committee chaired and appointed by the General President and are ratified not by the locals, but by the membership at large. Indeed, the signature of the local unions appears superfluous, because the Teamsters' constitution provides that the collective bargaining agreement becomes binding on all affected locals upon ratification by a majority of the nationwide Teamsters voting.

As a practical matter, then, the collective bargaining agreements that perpetuate past discrimination were negotiated on a national and conference basis by the International, were ratified by the membership of the International, and are administered in significant part by the International. In these circumstances, to hold that the local unions (which are scattered across the country) are indispensable parties would be to exalt form over substance. Moreover, there never has been any dispute that the International Brotherhood of Teamsters (or a subordinate body of the International such as a conference) is an adequate representative of the seniority interests of its members created by those collective bargaining agreements and that full and effective relief can be granted against the International. See *United States* v. *Navajo Freight Lines, Inc., supra; Sabala* v. *Western Gillette, Inc., supra; Rodriguez* v. *East Texas Motor Freight, supra; United States* v. *Roadway Express, Inc., supra.*[12]

[12] The Teamsters apparently assert an intracircuit conflict within the Fifth Circuit as a basis for certiorari. (Pet. 29). Even apart from the fact that this Court need not resolve such disputes, there is no such conflict. In *Rodriguez* and in two other decisions rendered the same days (*Herrera* v. *Yellow Freight System, Inc.*, 505 F. 2d 66, and *Resendis* v. *Lee Way Motor Freight, Inc.*, 505 F. 2d 69), the Fifth Circuit held the Southern Conference of Teamsters and a local union responsible for the collective bargaining agreements, but pointed out that the negotiations were conducted by the Southern Conference and that the signature of the locals was merely a formality. 505 F. 2d at 60. In *Herrera* and *Resendis*, the court found no violation of Title VII by the International. As the constitution of the Teamsters makes clear, the Southern Conference, like other conferences, is a "subordinate" body of the Teamsters and is "subject to the unqualified supervision, direction and control of the General President" of the International (Appendix, *infra*, p. 2a). In no case has the Fifth Circuit (or any other court) dismissed a Title VII complaint on the grounds that the local unions were indispensable parties.

CONCLUSION

For the foregoing reasons, the petitions for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1976.

APPENDIX

Excerpts from Constitution adopted by the Miami Beach, Fla., Convention, July 4–7, 1966, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

1. ARTICLE IX—GENERAL EXECUTIVE BOARD—DUTIES AND POWERS

GENERAL

Section 1. Such powers, duties and authority as are not otherwise delegated to the General President and General Secretary-Treasurer of the International Union shall be exercised, acted upon and determined by the General Executive Board. The General Executive Board shall have the authority to interpret and apply the Constitution and laws of the International Union and to decide all questions of law thereunder subject to appeal to the next Convention. The General Executive Board shall have governing authority over the International Union and its subordinate bodies to the end of upholding the laws and policies of the Brotherhood as expressed in this Constitution.

2. ARTICLE XVIII—TRANSFER AND WITHDRAWAL CARDS

DUTY TO ACCEPT TRANSFER CARD

Section 1. It shall be compulsory upon every Local Union to accept the transfer card of a member in good standing with any Local Union of the International Union, without any extra charge or fees, except as set forth in the International Constitution

[sic]: provided, however, the member seeking to transfer has already obtained employment within the jurisdiction of the Local Union; provided further the member seeking to transfer shall comply with all rules and regulations set forth in this Constitution respecting transfer; and provided further he shall comply with rules and regulations of the Local Union and its Constitution and Bylaws. A member who has transferred to a Local Union shall be entitled to the rights and privileges of membership in the Local Union in accordance with the rules and regulations of the Local Union.

3. ARTICLE XVI—CONFERENCES

ESTABLISHMENT

Section 1. Experience has demonstrated that State, Multi-State, Multi-Area or National and Area Conferences and Trade Divisions are of value to this International Union and its affiliates. Therefore, Conferences and Trade Divisions shall be organized and chartered as subordinate bodies of the International Union for such geographical area, industries or companies as the General Executive Board may from time to time direct. They shall be at all times subject to the unqualified supervision, direction and control of the General President and they shall function under the rules prescribed by the Bylaws approved by the General President. A Policy Committee for the Conferences shall be elected by the delegates to such Conferences in accordance with the applicable provisions of Conference Bylaws. The International Constitution shall supersede Conference Bylaws in the event of conflict.

* * * * *

AREA, MULTI-AREA OR NATIONAL, COMPANY-WIDE OR INDUSTRY-WIDE CONTRACTS

Section 4(a). If a majority of the affiliated Local Unions vote for area, multi-area or national, company-wide or industry-wide negotiations for an area, national, company-wide or industry-wide contract, all involved affiliated Local Unions shall be bound by such vote, must participate in such area, multi-area or national, company-wide or industry-wide bargaining and shall be bound by the contract approved as provided below. Upon completion of negotiations by a Conference, Trade Division, or by any Committee appointed by the General President, subject to the approval of the General Executive Board, to engage in negotiation of an industry, area, multi-area or national or company-wide contract, such contract shall be submitted to the membership covered by said contract proposal for their approval or rejection.

If a majority of the votes cast by Local Union members voting approve such contract it shall become binding and effective upon all Local Unions involved and their members. Local Unions which are parties to such contracts may not withdraw from such bargaining unit except upon six (6) months notice and for good cause shown to the satisfaction of the appropriate Conference, Trade Division or Committee, and approved by the General Executive Board of the International Union. If any Local Union believes that an area, multi-area or national, company-wide or industry-wide contract proposal will deprive its involved members of better existing conditions of general application to all such involved members of the Local Union it may appeal to the General Executive Board which shall have the final authority to determine whether such alleged better general conditions shall

be continued or shall yield to the overall gains of the proposed contract. Unless mutually agreed to, no Local Union shall suffer an economic loss * * *.

Such negotiating committees shall have the authority, with the approval of the General Executive Board, to conduct ratification votes and strike votes on such area, multi-area or national company-wide, industry wide, or Local Union basis as the committee shall determine, and in the event the strike is authorized, the said committee shall have the authority, with the approval of the General Executive Board, to direct that the strike be conducted on such area, multi-area or national, company-wide, industry-wide, Local or such other selective basis as the committee shall determine; provided, however, that the results of ratification or rejection votes with respect to national agreements shall be determined on a cumulative basis of all votes cast by all affected voting members in all areas, with a cumulative majority vote necessary for acceptance, and a cumulative two-thirds (2/3) vote necessary for rejection of the final offer and strike authorization as provided in this Constitution. The requirement that the employer's final offer of settlement can be rejected only by two-thirds (2/3) vote shall not apply during a strike.

This Article shall be broadly interpreted to carry out the intent and purpose of permitting national negotiations and national agreements in any industry in which the International Brotherhood of Teamsters has jurisdiction.

4. ARTICLE VII—GENERAL SECRETARY-TREASURER—DUTIES AND POWERS

GENERAL DUTIES

* * * * *

ISSUANCE OF CHARTER

Section 3. All charter applications must be signed by no less than seven (7) prospective members employed within the jurisdiction of the International Union, and before final issuance, must be approved by the General President, the General Secretary-Treasurer and the General Executive Board.

All Local Union charter applications must initially be submitted to the Joint Council or to the Conference (if there is no Joint Council) having jurisdiction in the area, which shall then forward such application to the General Secretary-Treasurer with an indication of whether such application has the approval or disapproval of such body. All other charter applications shall be submitted directly to the General Secretary-Treasurer. The General Secretary-Treasurer shall submit all charter applications to the General Executive Board. In determining whether to issue a Local Union charter, the General President, the General Secretary-Treasurer and the General Executive Board shall take into consideration, but shall not be bound by, the position of the Joint Council or Conference in the matter.

5. ARTICLE VI—GENERAL PRESIDENT—DUTIES AND POWERS

GENERAL DUTIES

Section 1(a). The General President shall preside at the Convention of the International Brotherhood of Teamsters and conduct the same in conformity with this Constitution. He shall have the deciding vote in case of a tie on any question that is being voted on by the Convention. He shall act to the best of his ability in furthering the interests of the organization. He shall fill any vacancy among the officers of the

International Union, subject to the approval of the majority of the General Executive Board.

(b). The General President shall have general supervision over the affairs of the International Union, which shall be conducted in accordance with the Constitution and subject at all times to review and approval of the General Executive Board.

* * * * *

APPROVAL OF BYLAWS OF LOCAL UNIONS

Section 4(a). Bylaws of Local Unions and other subordinate bodies and amendments thereto shall be subject to the approval of the General President. If the General President fails to approve the Bylaws, the matter may be referred by the subordinate body to the General Executive Board for its determination.

* * * * *

POWER OF GENERAL PRESIDENT TO APPOINT TRUSTEES; DUTIES AND OBLIGATIONS OF LOCAL UNIONS UNDER TRUSTEESHIP

Section 5(a). If the General President has or receives information which leads him to believe that any of the officers of a Local Union or other subordinate body are dishonest or incompetent, or that such organization is not being conducted in accordance with the Constitution and laws of the International Union or for the benefit of the membership, or is being conducted in such a manner as to jeopardize the interests of the International Union, or its subordinate bodies or if the General President believes that such action is necessary for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic proce-

dures or preventing any action which is disruptive of or interferes with the performance or obligations of other members of Local Unions under collective bargaining agreements, or otherwise carrying out legitimate objects of the subordinate body, he may appoint a temporary Trustee to take charge and control of the affairs of such Local Union or other subordinate body; * * *.

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OCTOBER TERM, 1975

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETITIONER

v.

UNITED STATES OF AMERICA AND
THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

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Petitioner contends that there is an "additional conflict" (Supp. Pet. 1) among the circuits as a result of the recent decision of the United States Court of Appeals for the Fourth Circuit in *Patterson* v. *American Tobacco Co.*, Nos. 75-1259 to 75-1263, decided February 23, 1976 (Supp. Pet. App. 1-46). We submit that not only is there no conflict between *Patterson* and the decision below but, on the contrary, *Patterson* reaffirms the adherence of the courts of appeals to the "rightful place" doctrine of seniority relief—a doctrine that was ratified by Congress in adopting the 1972 amendments to Title VII of the Civil Rights Act of 1964 and has recently been approved by this Court. See *Franks* v. *Bowman Transportation Co.*, No. 74-728, decided March 24, 1976, slip op. 15-17 and n. 21.

Petitioner asserts that the decision below is inconsistent with *Patterson* in two respects: first, that the relief granted here was broader than that permitted in *Patterson* (Supp. Pet. 1-2); and second, that the displacement of incumbent employees was required here but disapproved in Patterson (*id.* at 2-4). Neither contention is correct.

1. *Patterson* involved a company with two plants, Virginia and Richmond, each of which had a fabrication department and a prefabrication department. The evidence showed that black employees had been denied entry into the higher-paying jobs of the fabrication departments in each plant and that the effects of this discrimination were perpetuated by company rules that prevented employees from transferring their company seniority from one plant to the other. Thus, as the court of appeals noted (Supp. Pet. App. 16-17):

> [U]nder the present method of job assignments, a black employee hired in 1955 at the Richmond branch prefabrication department has no realistic opportunity to secure a higher paying job in the formerly white Virginia fabrication department because he cannot transfer his company seniority to the Virginia branch. If he seeks a new job there, he must forfeit his seniority and start as a new hire.

To remedy this discrimination, the district court in *Patterson* had ordered a single seniority roster for the two plants to enable employees in each plant to bid freely for posted jobs in the other. Although the court of appeals reversed the order of the district court insofar as it had authorized transfers with full seniority benefits in situations where there had been no past discrimination (*e.g.*, transfers by white employees or transfers

by black employees to prefabrication jobs), the Fourth Circuit upheld the grant of relief insofar as it had required that black employees assigned to the traditionally black prefabrication jobs be given the right to move with full plant seniority to jobs in the traditionally white fabrication department (Supp. Pet. App. 17-18).

Similarly, in the present case the class afforded relief was confined to those black and Spanish-surnamed employees who were initially assigned to city, dock and shop jobs prior to March 1971, at a time when their race or national origin barred them from over-the-road employment (Pet. App. 62). Under the court's decision, however, such employees were not allowed to transfer with full seniority rights to city, dock or shop jobs (from which they had never been excluded), but were limited to one transfer with seniority to traditionally all-white job classifications (Pet. App. 34-35). Thus, both the Fourth Circuit in *Patterson* and the Fifth Circuit in this case limited relief to the precise class of employees that had been harmed by the company's discriminatory assignment policies and to the precise situations in which that discrimination had occurred in the past.

2. Nor is there any conflict between the approach of *Patterson* and the decision below with respect to "bumping"—that is, the displacement of incumbent employees. In *Patterson*, the district court had required the company to promote qualified blacks with seniority into jobs presently held by whites and thus to displace (or "bump") the white employees from those jobs (Supp. Pet. App. 21-22). This decision departed from the generally accepted "rightful place" doctrine that has been adopted without exception by the courts of appeals (*id.* at 22-23). In reversing the district court, the Fourth Circuit adhered to the accepted principles, quoting with approval the language

of the Fifth Circuit in *Local 189, United Papermakers and Paperworkers* v. *United States*, 416 F.2d 980, 988, certiorari denied, 397 U.S. 919, that "[w]hite incumbent workers should not be bumped out of their *present* positions by Negroes with greater plant seniority" (*id.* at 22-23; emphasis in original).

The court of appeals here adhered to the same principles, relying upon the identical language quoted by the Fourth Circuit in *Patterson* (Pet. App. 31). The decision below does not require the demotion or bumping of any employee out of a presently held job. Rather, the court expressly stated that minority employees granted seniority transfer rights by the district court are to exercise those rights only as vacancies occur (*ibid.*).[1]

3. Finally, we note that this Court's decision in *Franks* v. *Bowman Transportation Co., supra*, provides additional justification for the denial of the petition. In *Franks*, the Court held that Section 703(h) of Title VII, 42 U.S.C. 2000e-2(h), does not bar an award of seniority relief in circumstances where an illegal discriminatory act or practice has been proven, and emphasized, through a review of the legislative history of the 1972 amendments to Title VII, that Congress intended the courts to grant meaningful, "make-whole" relief in appropriate cases—including restoration of the victims of discrimination to their rightful place in the seniority system (slip op. 15; footnote omitted):

[1]While the court of appeals did provide that members of the affected class should be allowed to compete for future vacancies on the basis of plant (terminal) seniority with persons who were on lay-off status, the Fourth Circuit also has approved that remedy as necessarily within the "rightful place" doctrine. *United States* v. *Chesapeake and Ohio Railway Co.*, 471 F.2d 582 (C.A. 4), certiorari denied *sub nom. Local 268, Brotherhood of Railroad Trainmen* v. *United States*, 411 U.S. 939. The Fourth Circuit's repeated citation of, and reliance upon, *Chesapeake and Ohio Railway* in *Patterson* clearly indicates that there is no conflict between those decisions or between *Patterson* and the decision below.

> This [legislative history] is emphatic confirmation that federal courts are empowered to fashion such relief as the particular circumstances of a case may require to effect restitution, making whole insofar as possible the victims of racial discrimination in hiring. Adequate relief may well be denied in the absence of a seniority remedy slotting the victim in that position in the seniority system that would have been his had he been hired at the time of his application. It can hardly be questioned that ordinarily such relief will be necessary to achieve the "make-whole" purposes of the Act.

The principle of making whole the victims of the undisputed discrimination found here was, of course, the basis for the remedy authorized by the court of appeals.

For the foregoing reasons and those set forth in the Brief in Opposition, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS
Petitioner

vs.

UNITED STATES OF AMERICA
Respondent

PETITIONER'S REPLY TO THE BRIEF IN OPPOSITION

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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PETITIONER'S REPLY TO THE BRIEF IN OPPOSITION

Petitioner, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, replies to the Government's Brief in Opposition as follows:

I.

The Government refuses to acknowledge or respond to the first three questions presented in the Petition for Certiorari. Instead they construct their own questions (Opposition pp. 2-3), two of which, in the Government's rendition, purportedly present only factual issues,[1] and the third

---

[1] See Government questions 1 and 2 (Opposition p. 2).

We, of course, acknowledge that facts are for the lower courts to determine. We do not present factual questions. We do respectfully insist that statistics as to present incumbency are not in themselves probative of discrimination, and that ongoing post-Act patterns of discriminatory hiring or job assignments must appear (See Peti-

attempts to present a question which is not in the case.

The Opposition is taken principally with attacking its straw-man, and arguing that courts have the power "to fashion a remedy involving retroactive seniority."[2] We agree!

But among the questions, which the Government does not speak to, are whether such a remedy may be applied wholesale, as here, on the basis of race; or whether it may be applied only to those shown to be adversely affected by unlawful racial discrimination?

II.

The Solicitor General is squarely on both sides of this most important question in the case.[3]

Here, he asserts (Opposition p. 15) ". . . *The courts need not engage in an exhaustive case-by-case analysis of the treatment of each minority employee.*" This assertion is made in support of the decision below, in which the Court

tion pp. 24-27); and that proof of the employer's racial discrimination is not proof that the union discriminated, particularly in light of the stipulated facts (See Petition pp. 5-9 and 19-24).

[2] Opposition pp. 17-18. The cases so holding are legion. But except for the spate of Fifth Circuit motor carrier cases now before this Court on application for certiorari, none of the cases in the circuit courts which the Government cites granted seniority carry over to individuals who had not been affected by unlawful racial discrimination.

[3] Question 3: "Assuming *arguendo* the validity of a finding of unlawful pattern or practice of racial discrimination, in fashioning a remedy . . . may fictional seniority benefits be awarded to all minority employees solely on the basis of their race, without regard to whether they were individually affected by the unlawful pattern or practice?" Petition for Certiorari p. 3.

of Appeals has rejected the trial Court's focus upon individual claimants—and has awarded augmented seniority to the entire class, without regard to whether individual class members were adversely affected by racial discrimination.

Yet less than three months ago, in the "Memorandum of the United States Amicus Curiae" in the *Jersey Central Power & Light Co.* case[4] the Solicitor General advised this Court:

> "But the Act does not require giving black (or other minority-group) employees enhanced seniority rights on the basis of their race simply because other black applicants were previously denied employment on the basis of their race. Treating black employees differently for purposes of layoffs solely because they are black, when they have not themselves previously suffered individual discrimination by the employer, would amount to preferential treatment on the basis of race within the meaning of Section 703(j) of the Act, 42 U.S.C. § 2000e-3(j).

We believe the Solicitor General was right in *Jersey Central*—and is wrong here. But in either event the issue is of importance; the uncertainty is certain, and should be allayed by decision here.[5]

III.

If the Court of Appeals had actually provided relief only for those minority employees "who qualified for the better

[4] No. 75-182, October Term, 1975, *Equal Employment Opportunity Commission* v. *Jersey Central Power & Light Co.*, et al, on certiorari from the Third Circuit 508 F.2d 687.

[5] Indeed in *Jersey Central*, the Solicitor General recognized the "substantial importance" of the question, and urged that certiorari be granted, even though the Department of Justice was not in agreement with the EEOC's reading of this statute.

paying jobs but were assigned to less desirable low paying jobs because of their race and national origin" as the Government's question number 3 asserts (Opposition p. 3), we would not be seeking certiorari.

The Court of Appeals specifically refused to order relief limited to those shown to have been adversely affected by racial discrimination, and substituted class relief benefiting all minority employees, solely on the basis of race, without regard to whether the individual beneficiaries of the order were assigned to less desirable jobs because of their race and national origin.

The trial court had ascertained those affected by unlawful racial discrimination, and had provided relief—assignment to "rightful place"—i.e., the job assignment and the seniority which the discriminatee would have enjoyed absent discrimination.[6]

The Court of Appeals specifically rejected this remedy—and substituted class relief for all minorities, whether or not each member of the class was a victim of racial discrimination.

In so doing the Court of Appeals exceeds its authority "to restore discriminatees to a position where they would

[6] The Government misstates our position when it asserts that Petitioners challenge the Court of Appeals' ruling that T.I.M.E.-D.C.'s minority employees are entitled to use their pertinent accumulated seniority in bidding for jobs from which they had been unlawfully excluded in the past." (Opposition p. 15.)

[7] The quotation appears on p. 17 of the Government's Opposition, where it is in turn quoted from the legislative history, 118 Cong. Rec. 7565.

have been were it not for the unlawful discrimination."[7]

IV.

Yet, the Government continues to insist ". . . the courts need not engage in an exhaustive case-by-case analysis of the treatment of each minority employee" (Opposition p. 15).

How can an individual's "rightful place" be ascertained unless that is done?[8]

WHEREFORE certiorari should be granted as prayed.

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[8] Title VII remedies were designed to track those applied by the National Labor Relations Board. See *Albemarle Paper Co.* v. *Moody*, ... U.S. ..... 45 L.Ed 2d 280, at 297. The NLRB may not grant employees back pay or seniority on a mere showing that an employer is anti-union. Proof that individuals were denied pay or seniority as a result of the employer's antipathy to the union activity is required before back pay or augmented seniority can be awarded.

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(Consolidated)

No. 75-636

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner

v.

UNITED STATES OF AMERICA, *Respondent*

No. 75-672

T.I.M.E.-D.C., INC., *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-636 and No. 75-672
(Consolidated)

No. 75-636

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner

v.

UNITED STATES OF AMERICA, *Respondent*

No. 75-672

T.I.M.E.-D.C., INC., *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR PETITIONER INTERNATIONAL BROTHERHOOD OF TEAMSTERS

OPINIONS BELOW

The Opinion of the Court of Appeals (P.A. 1-44) [1] is reported at 517 F.2d 299.

The "Memorandum Opinion" of the District Court, constituting that Court's "Findings of Fact and Con-

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[1] The following abbreviations are used throughout this brief:

"P.A." references are to the "Appendix to Petition for Certiorari" in #75-636.

"A." references are to the "Appendix" in the consolidated cases printed pursuant to the requirements of Rule 36, after certiorari was granted.

clusions of Law" (P.A. 56-78); and the District Court's "Supplemental Opinion" (P.A. 79-84) are reported only at 6 F.E.P. Cases 690, and 703, respectively.

The District Court's "Decree in Partial Resolution of Suit" (P.A. 85-93); "Final Order" (P.A. 94-116); and "Order" amending final order (P.A. 117-118) are unreported.[2]

JURISDICTION

The judgment of the Court of Appeals was entered August 8, 1975. Timely petitions for certiorari were filed in No. 75-636 on October 29, 1975, and in No. 75-672 on November 6, 1975. Certiorari was granted and the cases consolidated on May 24, 1976.

Jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTE INVOLVED

The Civil Rights Act of 1964, as amended—Title VII, §§ 703(a) through (j); and 707(a) through (e); 42 U.S.C. §§ 2000e2(a) through (j); and 2000e6(a) through (e), are reprinted at P.A. pp. 119-124.

QUESTIONS PRESENTED

1. Does a union violate Title VII of the Civil Rights Act of 1964, as amended, solely by continuation of a seniority system created in the 1940's which establishes separate seniority rosters for "road" and "city" motor carrier employees where, on the uncontradicted record, such seniority system was provided in lawful collective bargaining agreements negotiated in good

[2] The pertinent preliminary opinions of the District Court are: "Order," 12/13/71 (P.A. 45-49), reported at 235 F.Supp. 246; 4 F.E.P. Cases 77; and "Order," 1/20/72 (P.A. 50-55), 4 F.E.P. Cases 875.

faith pursuant to the requirements of the Labor Management Relations Act:

(a) with no intent to discriminate on account of race;

(b) constituted a bona fide seniority system, assuring job security for workers who have had no hand in their employer's racial discrimination, either directly or through their collective bargaining agent;

(c) was established in separate bargaining units in conformity with NLRB precedents;

(d) applies equally to whites, blacks and browns in protection of seniority on the basis of entry date into the particular bargaining unit; and thus serves to minimize movement from "city" to "road" (or vice versa) of all employees, regardless of race;

(e) does not involve a "line of progression," and does not affect promotion from unskilled entry level to skilled employment;

(f) is viewed by the Court of Appeals as improper until 1971 (but not thereafter) only because, in that Court's view, its continuation serves to perpetuate the employer's prior unlawful discrimination in hiring.

2. Assuming, arguendo, the validity of a finding of unlawful pattern or practice of racial discrimination by an employer,[3] in fashioning a remedy:

[3] We defer to the employer, TIME-DC, Inc., for the argument in support of question No. 2 in our Petition for Certiorari which challenged the holding below that incumbency statistics were "dispositive," and urged that an "ongoing post-Act pattern or practice of hiring or job assignment must be shown."

Nor do we here argue question No. 4 in the Petition for Certiorari relating to the propriety of proceeding to individual seniority allocations in the absence of the contracting local unions. The latter question is premature at this posture of the case.

(a) May fictional seniority benefits be awarded to all minority employees, solely on the basis of their race, without regard to whether they were individually affected by the unlawful pattern or practice?

(b) Do different standards for determining individual relief under Title VII apply depending on whether the action is an "individual," "class" or "pattern or practice" suit?

STATEMENT OF THE CASE

In January, 1971, the Attorney General brought suit against T.I.M.E.-D.C., Inc. (T-DC), a nationwide motor freight carrier, and the International Brotherhood of Teamsters (IBT), alleging a "pattern or practice"[4] of racial discrimination in violation of Title VII of the Civil Rights Act of 1964.

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[4] § 707(a) of the statute [42 U.S.C. § 2000e6(a)] empowered the Attorney General to bring "pattern or practice" suits in the following circumstances:

> "(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described."

By 1972 Amendment the functions of the Attorney General under this section were transferred to EEOC. See 42 U.S.C. § 2000e6(c), (d).

The claim was that T-DC had engaged in racially discriminatory hiring, assignment and promotion practices against blacks and Spanish-surnamed workers; but that IBT violated the Act only because it was party to collective bargaining agreements which, it was claimed, "perpetuate the effects of the policies and practices of discrimination by race and national origin of defendant T.I.M.E.-D.C."[5] (A. 6), solely because they provided for separate accumulation of seniority in separate "road" and "city" job classifications.[6]

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[5] The claim against IBT was cast somewhat differently when it was stated in the Pre-trial Order, viz, (A. 36):

> "The defendant Teamsters, by itself and through designated sectional conferences and affiliated local unions, is a party to collective bargaining agreements with T.I.M.E.-D.C. which prevent or tend to prevent black and Spanish-surnamed employees from transferring from the lower paying, less desirable job classifications to the higher paying more desirable job classifications, and thus perpetuate the effects of discrimination against black and Spanish-surnamed employees of the company."

In the pre-trial Order the government also claimed that IBT "has failed to agree to modifications of its collective bargaining agreements necessary to prevent the perpetuation of T-DC's discriminatory practices." (A. 37). Another labor organization, the International Association of Machinists (IAM) was the target of similar allegations. There is neither evidence nor finding that modification of the collective bargaining agreements was ever sought or refused.

[6] Almost three years earlier (in May, 1968) a "pattern or practice" suit had been brought against TIME Freight, Inc., (a predecessor of T-DC, which had merged with Super Service Motor Freight, P.A. 5), involving only its Nashville, Tennessee terminal (A. 2).

In November, 1968, that complaint was amended to name Nashville Teamster Local 480 as a defendant. The thrust of the

PROCEEDINGS IN THE DISTRICT COURT

THE TRIAL

A massive nationwide[7] discovery program ensued. Government counsel deposed T-DC agents throughout its system and more than seventy individuals who claimed to have been victims of racial discrimination. FBI agents photographed tens of thousands of pages of T-DC personnel records. Every existent employment record of T-DC or its constituents or predecessors was made available for Government inspection and photographing.

Trial was held before the Honorable Halbert O. Woodward, District Judge for the Northern District of Texas, from May 3 to May 12, 1972. There was no suggestion of separate trial of liability and remedy issues. To the contrary, the pre-trial Order (A. 32ff) the Trial Court's findings (P.A. 56-67), and the whole record demonstrate that all issues of liability and remedy were fully litigated. No issue was reserved

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amended complaint was against TIME Freight's hiring, assignment and promotion policies. Local 480 was joined as a defendant allegedly for having "created and maintained by collective bargaining agreements . . . job progression lines and seniority systems based on race . . ." There is neither evidence nor finding of "job progression lines" or of any seniority systems based on race!

In April, 1971, the Nashville case was transferred to the Northern District of Texas (A. 2) where it was consolidated (A. 3) with the nationwide suit, which meanwhile had been filed, January 14, 1971 (A. 4).

[7] Depositions were taken in San Francisco, Los Angeles, Denver, Oklahoma City, Chicago, Dallas, Memphis, Nashville and Atlanta.

for later trial; indeed, no request for such reservation was made.[8]

By live testimony, or by deposition the Government submitted testimony of fifty-seven persons claimed to be the victims of discrimination,[9] and statistical evidence of ratios of minority to majority incumbent employees as of March 31, 1971.[10]

No statistical evidence was submitted as to the hiring and placement ratios from the effective date of the Act, July 1965 to March 1971.

T-DC submitted evidence detailing its nationwide extensive operations resulting from a series of mergers[11], as well as statistical data covering the period

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[8] The Court of Appeals at P.A. 34 suggests "for all we know, at this stage some on App. C may have suffered discrimination even more egregious than those whom the Government singled out to be persuasive witnesses to establish pattern and practice." 517 F.2d 299 at 319. Again at P.A. 26 the Court of Appeals refers to the "liability stage" and at P.A. 34 refers to postponement of "evidentiary hearings" to the "remedy."

These suggestions of bifurcated trial—that only liability had been determined—and that remedy was yet to be tried are wholly erroneous.

[9] The trial court's original Findings (P.A. 56-78) specified only 41 of these [30 who "suffered severe injury because of the practice and plan of discrimination" (P.A. 63); four "who fall within a gray area" P.A. 64 and 77; and seven who "were clearly not injured by such discrimination."] (P.A. 65 and 78.)

Sixteen additional were noted in the Court's Supplemental Opinion, P.A. 79 at 80, ¶ II.

[10] See Exhibit 204, as summarized in Appendix A to District Court's Findings (P.A. 56ff. at 60; 68-72).

[11] By a series of mergers Time, Inc. progressed from a small operation between Lubbock and El Paso, Texas, to a nationwide operation. T-DC is the result of many mergers of motor carriers. See P.A. 5, note 6, where the details of the merger history are specified.

1967-72 showing that while its total employment dropped, the number of minorities increased in that five-year period. [12] T-DC also introduced evidence countering or explaining certain of the individual claims (A. 564ff).

IBT witnesses explained the history, development and operation of the collective bargaining agreements and the seniority system (A. 654-680) and union efforts to improve minority employment. (A. 649-714).

THE PARTIAL CONSENT

On the last day of the trial, T-DC entered into a consent "Decree in Partial Resolution of Suit" (P.A. 85-93) which the government acknowledged "resolved those issues relating to TIME-DC's alleged pattern of hiring discrimination and its resulting obligation to affirmatively recruit and hire qualified blacks and Spanish-surnamed Americans as new employees, and its alleged obligation to provide monetary compensation for those blacks and Spanish-surnamed Americans whom the United States alleged were individual and class victims of past discrimination. . ." [13]

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[12] T-DC system employment decreased from 7,238 in 1967 to 6,424 in 1972 (a decrease of 11%). During that same period the number of minorities increased from 512 to 677 (an increase of 32.2%).

In the year 1971 new hires were 16.9% minority. And 18.3% of the newly hired western road drivers in that year were minorities.

By 1972 minorities were 10% of the T-DC work force as against 7.1% in 1967. More than 16% of the city drivers and dockmen were minorities by 1972. See Exs. UU (A. 905); VV (A. 910); BBB, Tables 5 and 6 (A. 968-9); CCC (A. 974); MMM (A. 986).

[13] Brief for the United States filed July 16, 1973 in Court of Appeals for the Fifth Circuit, pp. 4-5.

In brief summary, this Consent Degree required recruitment and hire of Blacks and SSA's [14] pursuant to specified procedures, set out qualifications for employment of minority persons, provided priority hiring for certain classes of minorities, and required prospective hiring in the ratio of at least one Black or SSA "for each white hired or transferred in vacancies in each job classification at each of its terminals and facilities until the number of Blacks and Spanish-surnamed Americans in each job classification at each terminal and facility is equal to the percentage of Blacks and Spanish-surnamed Americans in the city . . . where the terminal or facility is located. . ." (P.A. 85-93).

The Consent Decree further required T-DC to pay $89,500.00 to the government for distribution to alleged discriminatees in amounts to be determined by the plaintiff's attorneys, not to exceed $1,500.00 to any person, and left jurisdiction in the district court "for such further relief or other orders as may be appropriate." (P.A. 91-92).[15]

THE DISTRICT COURT'S FINDINGS

The consent decree left for court determination the validity of the seniority system, allocation of individual seniority, and identification of "those individuals, if

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[14] In the interest of brevity throughout this brief we refer to "Spanish-surnamed Americans" as "SSA."

[15] There has been compliance with the requirements of the Consent Decree. Periodic compliance reports continue to be filed with the District Court, and have not been challenged.

any, who are entitled to relief under Paragraph 13(a) of the Consent Decree." (P.A. 58).[16]

The trial court viewed this as a "three step process: (1) was there a general plan and practice of discrimination by TIME; (2) was there discrimination against a person either as an individual or as a member of a class; and (3) what relief should be given each individual discriminatee" (P.A. 58-59).

A. Liability

As to liability, the District Court found that T-DC and its predecessor companies had been engaged in a plan and practice of discrimination in violation of Title VII. (P.A. 61.)

The liability finding was based upon statistics as to incumbency in March, 1971, (P.A. 60; 68-72), which "statistics alone [the District Court held] are sufficient to show a prima facie violation of Title VII" (P.A. 60).[17]

In addition to the prima facie statistical finding, the

[16] Paragraph 13(a) provides (P.A. 90):

> 13. All job vacancies at T.I.M.E. D.C. terminals and other facilities at which it employs personnel shall be filled in the following sequence:
>
> (a) By those persons who may be found by the Court, if any, to be individual or class discriminatees suffering the present effects of past discrimination because of race or national origin prohibited by Title VII of the Civil Rights Act of 1964.

[17] The District Court made no mention of the improvements in minority employment since 1967. See note 12, *supra*, p. 8. Nor was any attempt made by that Court to compare the incumbency situation with that which obtained in 1965, when the Act became effective. The government had not provided any evidence by which such comparison could be made.

District Court found that thirty named individuals (P.A. 63; 73-76) suffered severe injury because of T-DC's racial discrimination, and four additional were "very possibly the objects of discrimination and . . . were likely harmed by such discrimination" (P.A. 64; 77).

Based on the statistics and the findings as to 34 named individuals,[18] the District Court concluded that T-DC "and its predecessors engaged in racial discrimination. . ." (P.A. 60-61).[19] The time frame within which the discrimination occurred was not specified.[20]

[18] Thirty-four out of the fifty-seven as to whom the Government had presented evidence of alleged discrimination. See note 8, *supra*, p. 7.

[19] The District Court specifically defined the practices (P.A. 60-61):

> (a) Numerous qualified black and Spanish-surnamed American applicants who sought line driving jobs at the company over the years either had their requests ignored, were given false or misleading information about requirements, opportunities, and application procedures, or were not considered and hired on the same basis that whites were considered and hired.
>
> (b) Numerous qualified black and Spanish-surnamed American employees who have sought transfer to line driving jobs at the company have either been denied the opportunity to do so, or have not been permitted to transfer on the same basis as whites.
>
> (c) At its Nashville terminal, the company has trained whites, but not blacks, to be mechanics, partsmen and shop supervisors.

[20] As specified in the finding quoted in the preceding footnote, discrimination against those minorities who sought road jobs occurred "over the years" (P.A. 61). Examinations of the findings as to individual discriminatees (P.A. 73-77) discloses that most of these occurred prior to July 1965, the effective date of the Act.

The Court of Appeals found that since 1969 there has been

The union collective bargaining agreements were found "neutral on their face"; but nevertheless were held to "operate to impede the free transfer of minority groups into and within the company" (P.A. 61). Accordingly, the District Court concluded as to defendant IBT, P.A. 61-62:

> It is not the intent of this Court to order the Union to completely revise their seniority system, however, it is the ruling of this Court that neither TIME nor the Unions can set up the seniority system or the collective bargaining agreements to impede the natural infiltration of minority groups into and within the more advantageous jobs through TIME's employee hierarchy and the order of the Court, hereinafter described, will enjoin the Unions from interfering with relief here granted as well as the relief ordered by this Court's decree of May 12, 1972.

Although in briefs to the District Court the Government had alleged that the seniority system was unlawful, no such finding was made by the District Court; and the seniority system was left intact. As we shall see, individual workers as to whom there was proof that but for T-DC's discrimination they would have enjoyed additional seniority were granted that seniority. See *infra*, p. 13. The seniority system, as such, was not altered.

"laudable good faith effort to eradicate the effects of past discrimination in the area of hiring and initial assignment." (P.A. 27-28.)

The record is void as to the hiring and assignment practices in the period 1965-69; though it appears that mergers and acquisitions in '67, '68 and '69 brought going enterprises, including incumbent employees, at the same time total employment was diminishing. See Exhibits TT, VV; A. 899-909, and Testimony at A. 474ff.

B. The District Court's Remedy

The District Court in fashioning relief noted the Government's claim that all of the more than 300 minority T-DC incumbents hired prior to March 1971 were members of an affected class, but rejected the assertion that all should have full and uniform relief. The Court held, (P.A. 62):

> The plaintiff claims that since these people were hired during a period in which TIME was practicing a plan and pattern of discrimination, that they are members of a class affected by TIME's discriminatory practices. The Court accepts this view to the extent that all are members of an affected class. However, this Court does not hold that all members were injured individually by being within the class, or that those who were injured were all affected to the same degree. This Court, in fact, does hold that some were not injured by being a member of the class, and that those who were injured were injured in varying degrees. There are no degrees of discrimination—discrimination is discrimination, and if made on the basis of race is deplorable whatever the degree; however there are degrees of injury due to that discrimination—and this is important in determining the equitable relief this Court should afford these individuals.

Accordingly, the relief accorded by the trial court to minority employees was apportioned in accordance with the trial court's view of the degree to which each was damaged by the employer's racial discrimination.[21]

Four sub-groups of the minority employees were specified, viz.:[22] (A) thirty persons, all of whom were

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[21] See Trial Court's "Final Order," P.A. 94 at 100ff.

[22] See Trial Court's Opinion of October 19, 1972; P.A. 56 at 62.

found to have suffered severe injury because of the class discrimination, were granted the right (denied to white employees) to transfer to road employment with substantial fictional road seniority; (B) a second group, found by the District Court to fall within a gray area, as to whom the evidence was insufficient "to show clear and convincing specific instances of discrimination or harm resulting from discrimination," yet believed by the District Court to be "very possibly the objects of discrimination . . ." and "likely harmed by such discrimination," were given the opportunity to transfer to road jobs with lesser seniority carryover; (C) a third group, as to which "the evidence fails to show that there was any injury or harm as a result of TIME's discriminatory practices," and found "clearly not injured by such discrimination," were denied relief. A fourth group (of over three hundred employees), as to whom the District Court "has no evidence to show that these individuals were either harmed or not harmed individually by the discrimination to the class as a whole," were held entitled to road vacancies [23] with seniority as of the date of future entry into road employment.

By Supplemental Opinion (P.A. 79-84) minor amendments were made; and a "Final Order" (P.A. 94-116), as amended (P.A. 117-118) was entered. The Order, as amended, required transfer of employees in three specified groups and enjoined T-DC and IBT, their officers, agents, etc. "from engaging in any act

[23] The trial court originally provided for their preference over "the general public" (Opinion of October 19, 1972) (P.A. 65); but later, over the union's objection, granted this group preference over incumbent white city employees (Order of March 19, 1973), (P.A. 117).

or practice at any of TIME's facilities which has the purpose or effect of discriminating against any individual because of his race or national origin" (P.A. 95).[24]

All parties appealed. The defendants challenged the finding of "pattern or practice," and the relief as to certain individuals and all those named in Appendix C. The Government objected that the District Court's remedy was insufficient.

THE COURT OF APPEALS' OPINION

A. Liability

The Court of Appeals for the Fifth Circuit (P.A. 1-44; 517 F.2d 299) wrote much more extensively than had the trial court.[25] It made findings as to liability, holding that "the decisive significance of flagrant sta-

[24] The amended order specified procedures for notifying beneficiaries of the relief awarded (P.A. 95-96), and ascertaining present qualifications (P.A. 96-97). Beneficiaries were to be transferred to road vacancies at specified terminals (P.A. 97) with 30 day retreat rights *(Ibid.)*; procedures for effecting transfers were specified (P.A. 97-98); "vacancies" were defined (P.A. 98). Rights of "bumping" and limited inter-terminal transfers were provided (P.A. 99).

The Order as amended then directs the sequence of transfer in three listed groups, divided according to degree of harm (P.A. 101-102), and directs T-DC to provide job training to named individuals.

Finally, the Court enjoins union interference with the Court ordered relief (P.A. 102); and requires T-DC to make periodic reports (P.A. 103).

[25] The Government did not assert in its appeal to the Court of Appeals that any of the District Court's findings were "clearly erroneous." Nor did it seek specific additional findings. Nevertheless, the Court of Appeals essayed a full *de novo* review of the record, and made findings beyond those published by the District Court.

tistical deviations" (P.A. 23), buttressed by testimony as to individual instances (P.A. 24), proved that "the defendants (sic) have engaged in an extensive pattern of employment practices unlawful under Title VII and that strong remedial action is warranted." (P.A. 29).

In making the liability finding the Court specifically rejected the use of "the analytical steps delineated by the recent case of *McDonnell Douglas Corporation* v. *Green*, 411 U.S. 792 (1973), 93 S.Ct. 1817, 36 L.Ed.2d 668 . . . [as] inapplicable to a pattern and practice suit such as the one before us . . ." (P.A. 27).[26]

The *only* union dereliction found was that "the seniority system created by its contract perpetuates the effects of [the employer's] past discrimination" (P.A. 29).[27]

The government had complained in its Brief to the Court of Appeals that: "The district court permitted the defendant company and the Teamsters to maintain the discriminatory seniority system . . ." and "The District Court erred in so permitting the discriminatory seniority system to continue . . ."; for, the Government said: ". . . a system of seniority based on length of service in a job classification is itself unlawful under Title VII for all members of the class and must be changed in order to comply with the Act." Government Brief to Court of Appeals at p. 39.

[26] In the companion *Rodriguez* case the Circuit Court held *McDonnell Douglas* v. *Green* inapplicable in a Title VII private class action. 505 F.2d 40 at 55-56.

[27] The Court had earlier found, P.A. 18, that "the basic seniority issue in this case—whether a discriminatee should be allowed to transfer from city operations to LD (and thus from one contract to another) with full carryover terminal seniority—is neither specifically prohibited nor even addressed by the contracts . . ." (P.A. 18).

The 1970 addition of a specific non-discrimination clause in the collective bargaining agreement was noted as indicative of "good intentions and recent improvement" (P.A. 27-29) but insufficient to avoid liability (P.A. 29).

The Court of Appeals left the seniority system intact, but, as we shall see, granted fictional road seniority to all minority employees, without regard to whether they had been adversely affected by racial discrimination.

And despite current "laudable good faith effort to eradicate the effects of past discrimination" (P.A. 27-28), the Court held that both T-DC and IBT "have engaged in an extensive pattern of employment practices unlawful under Title VII and . . . strong remedial action is warranted" (P.A. 29).

B. Remedy

The Court of Appeals rejected the trial court's remedy, holding, 517 F.2d 299 at 319, P.A. 34:

> ". . . we cannot accept the gradations of App. A, App. B, and App. C. For all we know, at this stage[28] some on App. C may have suffered discriminations even more egregious than those whom the Government singled out to be persuasive witnesses to establish pattern and practice. All those on App. A, App. B and App. C are entitled to be

[28] The Court of Appeals' reference to "at this stage" would appear to indicate the Court believed that the trial had been bifurcated; that only liability had been determined—and that remedy was yet to be tried.

Actually, in a single, lengthy trial after literally years of discovery and depositions systemwide there was full trial on issues of both liability and remedy. See note 6, *supra*, p. 5.

given an opportunity to bid on future vacancies in the specified job classifications to which they are allowed to transfer by the District Court's order on the basis of their seniority and, if they qualify for those jobs, to be permitted to exercise their full seniority in such jobs for all purposes, including bidding and layoff."

Having jettisoned the District Court's remedy, the Court of Appeals held all minority employees entitled to preference for road jobs with fictional road seniority from the date each "had the experience necessary to qualify him for a road driving job," without regard to whether they had ever indicated a desire to transfer, or had otherwise been shown to have been affected by racial discrimination;[29] held inoperative as applied to beneficiaries of this lawsuit a provision of the pertinent collective bargaining agreement which assured laid-off employees preference in reemployment for a three-year period; in spite of the fact that the court acknowledged "that the union contract provision granting laid-off L.D.s [road drivers] a three year period in which they may move into vacancies at their home terminal without competition was not adopted for discriminatory purposes," 517 F.2d at 322, P.A. 40-41, the Court of Appeals modified the bidding procedure in a portion of T-DC's operations "in a manner that would speed up the advancement of discriminatees into the [road] position . . .,"[30] vacated certain provisions of the District Court's order relating to minorities as to whom there was no proof of injury; altered the Southern

[29] See 517 F.2d 318; P.A. 34, 35.

[30] 517 F.2d at 323, P.A. 43.

Area seniority system[31] and remanded for further proceedings consistent with the Opinion.

SENIORITY

The Opinion of the Court of Appeals at P.A. 7ff. identifies T-DC's four separate seniority units—road, city, garage, and office; and correctly notes that competitive seniority (which determines the order of bid, lay-off and recall) is measured from date of entry into the particular seniority unit; while benefit seniority (measuring eligibility for vacations, pensions, fringe benefits) takes into account total service, in whatever unit. The seniority rights are limited to terminal domicile.[32] See P.A. 7ff.

[31] The road seniority system in the Southern Area permitted laid-off road drivers to bump junior road drivers at other terminals of the same employer within the Southern Conference.

The Court's revision (P.A. 44; 517 F.2d 293, 324) permits a laid-off senior road driver to bump juniors at other terminals, but precludes such move where a vacancy exists and is desired by any "affected class" member. The laid-off road driver who bumps a junior driver at another terminal may exercise his right of recall when an opening occurs at his own terminal, but when an opening occurs at the terminal where the bump took place, members of the affected class may compete on the basis of seniority with the road driver on lay-off who was bumped (or with any other road driver on lay-off at that terminal). Finally, to "speed up the advancement of discriminatees into the road driver position" members of the affected class in the Southern Conference may bid on road driver openings at other terminals within the Conference in competition with employees at that terminal on the basis of employment seniority after all members of the affected class at that terminal have been given the opportunity to bid on the position.

[32] Except as modified in the Southern Conference. See note 31, *supra*.

But neither District nor Appellate Court describes the history and development of the bargaining and seniority patterns, the contract structures, the economic forces which formed them, the factual context in which they grew and now operate, or the policies which justify them.

The statute by § 703(h) makes significant the determination of the bona fides of a seniority system. Accordingly, we present a more complete description than is provided by either of the lower courts, viz.:

The collective bargaining structures, and seniority patterns in the motor carrier industry are the products of the economic history and development of the industry, wholly unrelated to race or national origin. The parties stipulated that race had nothing to do with the establishment of the bargaining patterns. See A. 49, P. 3(17).

Industrial peace in the motor freight carrier industry is maintained by collective bargaining, the product of the policy announced in the National Labor Relations Act, 29 U.S.C. § 151ff. Since 1964 the National Master Freight Agreement (NMFA), fleshed out by twenty or more Area or Industry Supplements, and literally hundreds of local riders, has governed the wages, hours and working conditions in that majority segment of the industry which is organized.

It was not always so. Collective bargaining in trucking began with single employers on a local basis. In the '20s and '30s inter-city (now known as "road") transportation was chiefly by rail. In much of the nation until the middle 1940's neither the roads, nor then available trucking equipment could handle the bulk of the inter-city traffic. Until after the second

world war there was only one transcontinental motor freight carrier.[33]

Local Cartage Operations

Accordingly union organization in the motor carrier industry began in local cartage—some as early as the horse and wagon.[34] When recognition was obtained it was on a local unit basis; accordingly seniority was measured and applied on a local unit basis.

Separate contracts, each individually negotiated on a local basis, were the best the workers could achieve until in the depression days of the '30s there were bitter and successful strikes for city-wide recognition [35] which resulted in uniform wages and conditions within particular metropolitan areas. In the early 1950's union leaders sought to eradicate differentials between cities by obtaining state-wide—then regional—and finally area contracts.[36] Thus uniform wages, conditions and seniority standards were ultimately (in 1955 in Central

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[33] Histories of Teamsters' organizational efforts, successes and failures may be found in Farrell Dobbs: *"Teamster Power,* Monad Press, N.Y. 1973; Leifer, *The Teamsters Union,* Bookman Assoc., N.Y. 1957; 132-192; James & James, *Hoffa and the Teamsters* (A study of union power), Van Nostrand, N.Y. 1965.

[34] The Teamsters registered trade-mark emblem combines the horse and the wheel.

[35] See James & James, *Hoffa and the Teamsters* (A study of union power), Van Nostrand Co., Inc., N.Y. (1965) at Chapter 5, pp. 89-127.

[36] As we shall see (pp. 22-23) road organization, though commencing long after city contracts were obtained, shortly obtained strong, standardized area contracts. Local cartage continued ancient patterns, "a staggering diversity of contractual provisions, stemming from many years of independent isolated negotiations." James, Op. Cit. p. 125.

States; 1957 in the South) attained for city employees.[37] But since city employees were attached to a particular local "city" terminal—and seldom, if ever, moved from one city to another—the local terminal seniority pattern continued. Lay-off and recall were to be in local terminal seniority order. And when (in the 1940's) union bargaining influence grew to the point that such worker benefits as selection of shift or starting time—and (later) even route selection—were no longer at the unilateral whim of the employer, the "city" collective bargaining contracts provided for periodic postings and selections in seniority order.

Road Operations

Meanwhile, the truckers' road operations were beginning to take more of the rail's intercity freight. Originally, low capital requirements [38] meant easy entry and intense competition. The economic structure of the over-the-road trucking industry was numerous small-scale entrepreneurs.[39] If the union organized at point A and raised wages, there soon came firings or lay-offs there, and new hires were domiciled at point B where

[37] The union refused to sign the 1955 over-the-road agreement unless the employers agreed to an areawide local cartage agreement which eradicated wage differentials ranging from $1.25 to $2.50 per hour; and hour variations from 60 to 40. James, Op. Cit. p. 125.

[38] The state built and maintained the highways, the local terminals were already built. All that was needed were trucks and drivers.

[39] Some were exclusively "city"—others were exclusively "road." See A. 652-661. Even as recently as 1960 the number of interstate for-hire carriers operating under ICC permits exceeded 17,000. And 80% of these had an annual gross revenue of less than $200,000.00. In addition, thousands of similar intrastate, inter-city road carriers operated under state permits.

there was no organization. So efforts for road organizing were coordinated to include both A and B—and actually to include the entire road system. These road organizing efforts were proposed in the mid-30's and, although the IBT's International President Tobin, who feared interference with local Teamster jurisdiction, originally opposed such efforts, he finally acquiesced.[40]

Road organization was successful in most of the nation by the end of World War II, and area road bargaining patterns were established by the late 1940's through centralized bargaining—[41] first in the Central States Drivers' Council, later in the respective regional area Southern, Western and Eastern Conferences. Uniform wages and conditions for road drivers eradicated the north-south wage differential and established seniority as the basis for determining order of lay-off and recall, and the order of bid for "regular" runs or "extra-board" assignments.

The separate road-city seniority patterns thus evolved and were firmly established a generation before Title VII was passed. Race had nothing to do with it. The evolution of these bargaining and seniority patterns had no adverse effect upon the black—the only impact upon minorities was to bring those whom the industry employed to the same wage levels as their

[40] See James, op. cit. at 91 ff.

[41] Meanwhile, the trend toward merger of inter-city lines accelerated. Large area, and even nationwide trucking firms were put together by purchase, merger or other form of acquisition. The T-DC growth is typical.

See Kaplan, David, "Negotiating Problems of the Trucking Industry," Proceedings of the Conference on Industrywide Collective Bargaining, May, 1948, Univ. of Penna. Press, pp. 81-87.

white brothers, and to assure that, when hired, they would have the same seniority protections as all other workers.

Present National Bargaining Pattern

Bargaining in motor freight evolved, as we have seen, at first sporadically on an extent of organization basis, then through local, state, regional and area; finally, in 1964 national bargaining was achieved.[42]

The national pattern does not strait-jacket the entire nation into absolute uniformity. The bargaining takes account of area and local differences. The device by which this is done is a three-part collective bargaining agreement. The National—negotiated at the national level—the Area Supplements,[43] negotiated by Area Committees; and local union riders.

At the national level there is commitment to the principal of seniority. But the specific seniority system to be applied is negotiated at the Area level and is specified in the various area supplements, sometimes modified by local riders.

Thus the NMFA in Article 5 (A. 804) provides as to seniority:

> "Seniority rights for employees shall prevail under this Agreement and all agreements supplemental hereto . . . The extent to which seniority shall be applied and accrued as well as the methods and

[42] The agreements since then have been of three year duration: 1964-67; 1967-70; 70-73; 73-76. (A. 512ff.) The 1976-79 agreement has recently been settled.

[43] Within each Area, there are separate supplements for road, city, office and garage, respectively.

> procedures of such application shall be clearly set forth in each of the Supplemental Agreements."

The specific seniority system to be applied later appears in the respective Area Supplement.[44]

For example, Article 42 of the Southern Conference Area Local Freight, etc. Agreement provides that a list of all "city employees."[45] shall be posted periodically, arranged in order of seniority. Thirty days is allowed for protest, else the posting is final. Controversies as to seniority are to be settled through the grievance procedure. "Terminal seniority" is to prevail.[46] The last hired is the first laid off. Jobs are bulletined at least every six months and those with the greatest terminal seniority have first choice in job selection.[47] This is the traditional scheme; it has been so for more than a generation.

Similarly, the Southern Area "Road" supplement (A. 823ff, Art. 42, § 4) provides for posting of listings

[44] There are thirty-six separate Area or State Local Supplements. (A. 513.) These are negotiated by Area Negotiating Committees, (A. 504ff.); and apply to local practices with regard to seniority, often unique to the particular location. (A. 510.)

[45] I.e., checkers, drivers, switchmen (hostlers), forklift operators, riggers and dockmen. See Article 55, Southern Area Local Supplement.

[46] Exceptions are provided in instances of "Change of Operations," Art. 8, § 6; and sale or merger. (A. 813.)

[47] Thus within the "city" classifications an employee may drive for a period, then decide to operate a forklift, or become a "checker" at the next posting. The wages are the same. See Art. 55. So. Area Local Supplement.

There is no "line of progression" under these contracts. Entry into any classification is at top rate. (P.A. 6.)

of road drivers domiciled at a particular point,[48] and bidding for road "runs" at twelve-month intervals, or as vacancies develop. The separate supplements covering garage and clericals, respectively, make substantially similar unit seniority applications with respect to bidding, lay-off and recall.[49]

Following this pattern, the wages, hours and working conditions including the seniority position of most of the T-DC drivers, dockmen and mechanics, and several groups of its clericals, are provided in separate collective bargaining agreements with eighty-three separate autonomous local unions chartered by the IBT.[50] Several hundred separate agreements with the many autonomous local unions, cover specified separate groupings of employees, i.e. "Road," "City," "Clerical" and "Garage."

There is no "line of progression" from road to city, or from any classification within a particular supple-

[48] T-DC has many more terminals than it has road domiciles, i.e., fifty-one terminals, but only twenty road domiciles. (P.A. 18.) As highways and trucking equipment improve the trend is toward fewer road stations, and larger numbers of road drivers at each. Thus, where there originally were several road domiciles between Dallas and Los Angeles, now a team of two drivers in a sleeper-cab drive the entire distance; usually making two round trips per week.

[49] Other seniority applications, i.e. vacations, holidays, pensions and other fringe benefits are based on total time employed, without regard to specific terminal location, or work classification.

[50] See Appendix B to Pre-Trial Order, A. 114-70, where the locals and their respective agreements are listed. And in some areas, city contracts are separate for "heavy duty," "city" drivers and "dockmen."

mental agreement. Choices of "runs", starting times, day or night shifts, regular or "extra board" allocations are made on the basis of date of entry into a job classification covered by the particular supplemental agreement.

These seniority practices did not spring up in an arbitrary or irrational fashion. Until there was a union contract there was no seniority.[51] And if "city" workers organized before their road brethern, they were not anxious to afford to road drivers bidding rights to their city jobs, when years later, the road became organized.

There were also operational reasons for the separate seniority listings. In those few instances where road and city were originally organized simultaneously and grouped in a single list, they soon were divided into the conventional separate "Road" and "City" groups, for it was found that frequent transfer diminished both the opportunities of the workers and the profits of the employers.[52] It is obviously more efficient and economical to retain in the city a driver who "knows the territory," is acquainted with city routes, parking facilities, customer personnel, et al., than to permit the road driver to bid a city run and then train him in the necessities of the city operation. The freight lines, whether union or non-union, uniformly establish their

[51] See A. 778, witness Dixon: "Seniority is a creature of contract . . . if an employee doesn't have either an individual contract or a collective contract providing for seniority he is at the whim of the employer . . . Our [the Union's] first concern always has been when people are organized . . . to set up seniority protections."

[52] Cf. Dixon's testimony at A. 656. Road drivers who spent the summer in northern climates, then bumped into the city down South in the winter, disrupted both the city drivers' morale and the functioning of the employer's business. (A. 660.)

supervisory hierarchy and management controls recognizing the functionally distinct "road" and "city" operations. And, except for T-DC, the employers in the industry traditionally have barred transfer from city to road. The "no-transfer" rules have been unilaterally imposed by the employer. As the Court of Appeals recognized here (P.A. 18), the union contracts do not prohibit transfer.

The functional distinctions between "road" and "city" are apparent from the disparate working conditions. City drivers work a guaranteed 40-hour week and receive an hourly wage and time and one-half over 40 hours. Road drivers are paid by the mile, with the mileage rate formulated to approximate the road driver hourly rate applicable to non-driving work. They have no guaranteed work week. Most work 60 to 70 hours per week, with no premium for overtime.

But despite the absence of a weekly hour guarantee, many road drivers have an opportunity to earn a larger annual income than that paid to city employees by working much longer hours.[53] At the same time, road drivers have living expenses away from home domicile, work much longer hours than their city brethren, and generally are away from homes and families.

City drivers have many short hauls, and much time is spent in personal contact and sales efforts with customers. Road drivers have single long hauls with no customer contact.

Because of the guaranteed nature of the work-week, and the ability to work regular hours while enjoying

[53] Compare annual income road and city in 1969 (A. 898) with comparative income in 1971 (A. 986).

home and civic life, many employees choose and prefer city work. On the other hand, those with less family or civic ties—or those willing to forego them for the opportunity of more total pay at the expense of 60 to 70-hour work weeks—prefer the road. As to which is more desirable, "it depends on the individual." (A. 665-667.)

There are large practical difficulties involved in working "city" and "road" from the same seniority list—or even assigning casual road work to city drivers, or vice versa. Road drivers must adhere to government-required hours of rest. City drivers usually work in day time—road at night (although some city operations are 24-hour, three-shift affairs). Constant interchange would deprive the city driver of the personal sales contact which grows from daily familiarity with the customers on the city route. And the layover time frequently experienced by the road driver waiting for a back-haul makes the time of his return to home base indefinite. At best it is not definite enough to permit him to return timely to man a city truck and meet the precise pick-up and delivery scheduling which the customers demand.[54]

For these and other reasons, the NLRB has traditionally treated the separate "road" and "city" classifications as functionally distinct, and has long ago determined that it is proper to treat city and road units separately for collective bargaining purposes. Thus in *Georgia Highway Express,* 150 NLRB 1649 at 1651 (1960) the NLRB held:

> ". . . The Board has long held that local drivers and over-the-road drivers constitute separate

[54] Cf. A. 660-663.

> appropriate units where they are shown to be clearly defined, homogeneous, and functionally distinct groups with separate interests which can effectively be represented separately for bargaining purposes. . . .
>
> In view of the different duties and functions, separate supervision, and different bases of payment, it is clear that the over-the-road drivers have divergent interests from those of the employees in the [city] unit sought and should not be included in that unit."

Accordingly, it is here stipulated: "The government does not allege . . . that the bargaining units were established for the purpose of discrimination on the basis of race or national origin (A. 49; Pre-trial Order, ¶ 3(17)).

Not only is it shown that the seniority system was not established to effect discrimination; it affirmatively appears that Teamsters early understood that employers played off black against white to undercut the wages and conditions the unions were attempting to establish.[55] Accordingly, IBT unions have made

[55] As Dixon explained the situation in Texas in the mid 40's, (A. 676):

> "Well, when I first got in the union the situation was, as it was then in most of the South, if I—at first I didn't own a car, so I had to ride the bus, or streetcar to go back and forth to work myself, and I sat in the front of the bus by law and the black had to sit in the back.
>
> By the same token, when I first got in the union and went to the union hall, why, I noticed that the whites sat in the front and the blacks sat behind. One of my first jobs was trying to organize and I discovered that the employers in my mind took advantage of the situation to the extent that some of them would, when we organized, some people would stay in the freight at one company, or in the warehouses, particularly, and got some little better wages and conditions, then the

special effort to organize minorities, and are color blind with respect to participation in union affairs and application of collective bargaining contracts.

While IBT unions are made up of various ethnic groups,[56] all who perform similar work have similar wages and conditions. It was not always so. Particularly in the South, in the 1940's, and even into the early '50's there were strikes to obtain recognition and to eradicate the black-white wage differentials for the same job. IBT has been at the forefront in lobbying for Civil Rights legislation, including that upon which this suit is based, (A. 677-678) and in expending union time and treasure in educational and upgrading efforts for minority workers (A. 699; A. 575-576; 611ff., Ex. QQQ).[57] And by 1970 the employers agreed to the

> employer sought to hire blacks and put them to work as non-union because they would put them to work cheaper. So we particularly tried to go out and see if those people wanted to get organized so that we could bring them up to the same level so that there wouldn't be unfair competitive situations between the workers.
>
> Now, the people we were able to organize who were black . . . were organized into our union and had contracts or came to our union meetings, that all people would have to be treated alike. That included seating or voting or anything else in our union, so that's the way it was from that point forward."

[56] One of those brought to deposition by government counsel testified that the IBT local to which he belonged was a veritable "League of Nations", and as reported in the Department of Labor's Monthly Labor Review for March, 1968 at p. 70, the Teamsters take pride in the fact that ". . . our union does not equivocate or pussyfoot on the race question. On the job and at the hall all members are union brothers . . ."

[57] The official publication of the U. S. Department of Health, Education and Welfare in its November 1971 issue (Ex. QQQ, A. 988 at 990) describes the Teamsters-initiated Transportation Opportunity Program, which effectively educates minorities in truck-driving skills. Cf. A. 699-714.

union proposal that the NMFA agreement include Article 38, which provides:

> The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin.

In sum: The seniority system is traditional, established in bargaining units which NLRB has designated based upon historical processes in the growth of collective bargaining in trucking industry—and is color-blind. Black, white and brown are treated equally without regard to race or national origin. At T-DC,[58] each may freely transfer between jobs covered by different contract supplements. When he does he carries his "company" benefit seniority with him, but establishes "unit" seniority from the date of entry into the unit. That unit seniority determines the order in which he may bid for posted "runs" or "shifts"; and also determines order of lay-off and recall. These privileges of employment were assured by collective bargaining agreements which established traditional bona fide seniority systems.

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[58] This employer's permission freely (A. 517) to transfer is somewhat unique to T-DC. Most of the industry unilaterally forbade such transfers. See *Jones* v. *Leeway*, 431 F.2d 245 (C.A. 10, 1970), cert. den. 401 U.S. 954 (1971); *Sagers* v. *Yellow Freight System*, 388 F.Supp. 428 (N.D. Ga., 1974), affirmed, 529 F.2d 721, pending on rehearing (C.A. 5, 1976); *United States* v. *Leeway Motor Freight Lines*, 7 FEP Cases 710 (W.D. Okla., 1973); *Thornton* v. *East Texas Motor Freight*, 497 F.2d 416 (C.A. 6, 1974).

Within this seniority framework, T-DC as of 1969 employed 1,828 road drivers and 2,674 within the "city" units. Of the "city" group 209 were black; 181 were SSA; for a total of 390 minority workers. (P.A. 21).

Any of the 2,674 city employees who transfer city to road—whether the more than two thousand whites, or the almost 400 minorities—begin "road" seniority as of the day of entry into the road unit. If this seniority system deters the almost 400 minority employees from transfer to the road, it similarly deters more than two thousand whites. Obviously, it was not designed to deter 2,000 whites from transfer in an effort to slow down the 400 blacks from similar movement.

The seniority system has evolved through almost two generations as the most efficient way of providing job protection to the employees while providing the stability necessary for the employer to get the freight moved. And there is not a scintilla of evidence that it is intended to effect racial discrimination.

SUMMARY OF ARGUMENT

Title VII of the Civil Rights Act should be applied to achieve two objectives: (1) to forbid racial discrimination and "make whole" its victims; and (2) to prohibit preference to any group on account of race.

1. The Seniority System Is Lawful

The existing seniority system is bona fide within the meaning of Section 703(h) of the Act. It is facially valid and provides a means for assuring that every victim of racial discrimination is accorded the rightful place he would have achieved but for the employer's discrimination.

The Court of Appeals erred in concluding that the IBT engaged in a pattern of unlawful employment practice solely by maintenance of this seniority system. No other union practice is questioned.

The IBT position throughout the litigation has been to insist, in accordance with the collective bargaining agreements and the practice under them, that victims of racial discrimination be awarded the seniority which would have been theirs had there been no discrimination.

Section 703(h) of the Act, its legislative history, this Court's *Franks* v. *Bowman* decision, NLRB decisions and the history and application of the system itself, all support the view that continuation of this seniority system does not violate Title VII.

2. The Proper Remedy for Unlawful Discrimination

The Court of Appeals erred in refusing to focus on the victims of racial discrimination, instead providing enhanced seniority for all minority workers, regardless of whether they had been adversely affected by unlawful racial discrimination.

While Congress sought to "make whole" the victims of racial discrimination, it specifically forbade any grant of racial preference. The Court of Appeals' wholesale grant of seniority preference to blacks and Spanish-surnamed Americans and its refusal to limit relief to those who were the actual victims, amounts to impermissible reverse discrimination.

The District Court's method of identifying the actual victims and making each whole by installation in

the "rightful place" he would have occupied but for racial discrimination is consistent with the approach later specified by this Court in *McDonnell Douglas* v. *Green,* 411 U.S. 792; and by the NLRB in making whole victims of anti-union discrimination under the National Labor Relations Act, the model upon which Section 706(g) was patterned. The Court of Appeals erred in jettisoning this approach.

The Court of Appeals also erred in modifying the collective bargaining agreement which assured laid-off employees recall rights for a period of three years. This provision was not adopted for discriminatory purposes, and does not block any individual from the "rightful place" he would have enjoyed absent racial discrimination.

Nor is there basis for revising the Southern Conference seniority system by which laid-off road drivers may displace juniors within the specified area. This provision of the collective bargaining agreement is likewise "neutral" on its face, and does not impede "make whole" awards. The Court of Appeals' rationale that this provision "would tend to impede advancement of Blacks and SSAs" into road positions is invalid. The Act does not assure advancement, nor authorize removal of impediments to advancement. Racial victims may be made whole without alteration of the contract. They are entitled only to be made whole—not to preference in advancement.

ARGUMENT

In application of Title VII of the Civil Rights Act, two clear Congressional objectives should be at the fore: (1) to forbid racial discrimination and to "make whole" those who were damaged by racial discrimination; and (2) to guard against the conferring of pref-

erential rights upon any group on account of race or national origin. Congress clearly prescribed "make whole" remedies, while forbidding "preferential" remedies.

With these objectives in mind, we inquire first as to the validity of the Court of Appeals' holding that IBT violated Title VII, and then address ourselves to the problems of identifying those who were damaged by the employer's racial discrimination, and formulating a remedy which will make whole the actual victims of racial discrimination without granting preference to those who were not adversely affected thereby.

1. The Seniority System Is Lawful [59]

Here, as in *Franks* v. *Bowman Transportation Co.*, — U.S. —, 47 L.Ed. 2d at 456, "[t]he underlying legal wrong . . . is not the alleged operation of a racially discriminatory seniority system but of a racially discriminatory hiring system." The employer here, as there, had sole responsibility for hire and job placement. (P. A. 60-61.)

This basic unlawful employment practice found by the courts below was, as the government admitted in its brief to the Court of Appeals, (see p. 8, *supra*) fully remedied by the consent decree by which this employ-

[59] Issues concerning the legality of the seniority system are fully discussed in the brief filed by the Southern Conference of Teamsters in a related case, *Teamsters Local 657* v. *Rodriguez* (Consolidated Nos. 75-651, 75-715 and 75-718). There, again, it is pointed out that: (1) the seniority system is non-discriminatory both in its origin and on its face; (2) is favored by a substantial majority of affected employees, including minority employees; and (3) contract rules provide for the rights of discriminatees and guard against reverse discrimination. There, as here, a finding of union violation of and liability under Title VII by the Court of Appeals effects reverse discrimination which Title VII prohibits.

er's unlawful hiring and placement practices were prohibited and the victims compensated.

Proof that an employer violated Title VII is not proof that the union did so.

No union violation is even alleged, other than the continuation of the seniority system which measures competitive seniority from entry into the particular classification, road or city. The Court of Appeals' finding that IBT violated Title VII can be supported only (1) if the seniority system is *per se* unlawful, or (2) if the union insisted that it be administered in such a way as to constitute an unlawful employment practice. Neither appears.

Franks v. *Bowman Transportation Co., supra,* teaches that Section 703(h) of the Act "delineates which employment practices are illegal and thereby prohibited and which are not" — U.S. —, 47 L.Ed. 2d at 458. That section specifies "it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority . . . system . . . provided that such differences are not the result of an intention to discriminate because of race, color, . . . or national origin."

The legislative history redundantly declares that "Title VII would have no effect on established seniority rights." Without reiterating the legislative history and rationale discussed at length in *Franks* [60]— that the thrust of Section 703(h) of Title VII is the insulation of an otherwise bona fide seniority system from a challenge that it *per se* amounts to a discrimina-

[60] Majority Opinion at § II, headnotes 7 and and 8, at — U.S. —, 47 L.Ed. 2d at 458, Text at footnotes 11 through 18.
Dissent at — U.S. —, 47 L.Ed. 2d at 471.

tory practice because it perpetuates the effects of racial discrimination—we take it as established that continuation of a bona fide seniority is not, in itself, unlawful.

The proper inquiry, then, is as to the bona fides of this particular seniority system. The government asserted below that ". . . a system of seniority based on length of service in a job classification is itself unlawful under Title VII for all members of the class and must be changed in order to comply with the Act." [61]

Neither court below accepted that argument and neither would alter the seniority system. To the contrary, both made clear that the system was not *per se* violative of the statute. Indeed, every court of appeals which has examined the system has left it intact. In *Bing* v. *Roadway,* 485 F.2d 441 at 452, the Court of Appeals specified that ". . . the unions seniority system treat[s] new employees impartially." This, and similar seniority systems have often been before the courts, but have never been enjoined.[62]

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[61] *Supra,* pp. 12, 17. Government Brief to Court of Appeals, p. 39.

[62] *Jones* v. *Leeway Motor Freight,* 431 F.2d 245 (C.A. 10, 1970), was the first trucking case. It held "no transfer" unlawful, but "express[ed] no opinion on the seniority problems which may arise in the event that one of the plaintiffs qualifies and is accepted for a line [road] job." 431 F.2d at 250.

Witherspoon v. *Mercury Freight Lines, Inc.,* 457 F.2d 296 (C.A. 5, 1972), and *Belt* v. *Johnson Motor Lines, Inc.,* 458 F.2d 443 (C.A. 5, 1972), likewise addressed employer hiring discrimination—but not seniority. *Bing I (Bing* v. *Roadway Express,* 444 F.2d 687 (C.A. 5, 1971)), likewise enjoined "no transfer"—but did not speak to seniority; *Bing II (Bing* v. *Roadway Express,* 485 F.2d 441 (1973)), required transfer (city/road) of designated workers and awarded seniority "in order to make them whole" (at 450). Seniority was addressed: *"How much seniority the transferee deserves should be determined by the date he would have transferred but for his employer's discrimination;"* and specifically noted that "the union's seniority system treats new employees impartially" (at 452).

While in *Franks* v. *Bowman,* 495 F.2d 398 (C.A. 5, 1974), and in *United States* v. *Jacksonville Terminal* (451 F.2d 418) (C.A. 5, 1971), the Fifth Circuit wrote that departmental and "craft and class" systems were "discriminatory unlawful employment practice[s] under Title VII," in neither case did it abolish the system; rather it provided augmented seniority for the "discriminatees." 495 F.2d at 495.

Similarly, in subsequent motor carrier cases, the lower courts—though on occasion writing in terms of the illegality of the system—have never abolished it. Rather, they have left the system intact, while granting augmented seniority to individual victims of the discrimination. Usually, they have stated the rationale that this was to "make whole" the victims who were assigned the "rightful place" which would have been achieved absent the employer's discrimination.

As we shall see, *infra,* pp. 46-48, some of these courts actually granted preference on account of race, and did much more than "make whole." But the point here is that none of them has jettisoned the seniority system, which would have been the necessary result had the "departmental" or "classification" system actually been *per se* a discriminatory unlawful employment practice under Title VII.

The government's assertion that a seniority system which measures length of service in a job classification "is itself unlawful" is belied when Section 703(h) is considered against forty years of NLRB decisions which have defined units appropriate for purposes of collective bargaining. Conventional bargaining units at the time 703(h) was passed included industrial, craft, departmental, plant, employer, multi-employer, and various combinations thereof.[63] In providing in Section 703(h) that bona fide seniority systems are not violative of the Act, the Congress did not

[63] See Morris, *The Developing Labor Law,* ABA Section of Labor Relations Law, at Chapter 9, "Appropriate Bargaining Units", pp. 200-245, and cases there cited, Bureau of National Affairs, 1971.

speak only to industrial or plant-wide seniority. Seniority systems within smaller, or larger units were as bona fide as was the employer unit.[64]

Congress thus obviously was aware that any seniority system (industrial, craft, departmental, plant, employer, or multi-employer) tends in more or less degree to maintain relative status quo—or at least to govern employee movement. Yet it specifically provided in 703(h) that differences in wages or conditions resulting from bona fide seniority systems would not be "unlawful employment practices."

The bona fides of the system are further demonstrated by its history. The evolution and development described above (pp. 20 to 33) emphasize that which is implicit in the government's stipulation: that the bargaining patterns are not the result of an intention to discriminate because of race.

Maintenance of a seniority system created many decades ago by which separate seniority rosters for "road" and "city" motor carrier employees are continued, and competitive seniority is measured from date of entry into the classification, does not violate Title VII. This seniority system, provided in lawful collective bargaining agreements negotiated in good faith pursuant to the requirements of the National Labor Relations Act, and with no intent to discriminate on account of race, assures job security to workers who have had no hand in their employer's racial discrimination. The system applies equally to all workers, regardless of race, color or national origin on the basis

[64] A certified union bargains only within the scope of its certified unit. The Labor Act does not authorize bargaining for those outside the unit. *N.L.R.B.* v. *Pittsburgh, Plate Glass Co.*, 404 U.S. 157 (1971).

of entry date into the particular seniority classification. It is to be distinguished from systems involving "lines of progression," or those blocking promotion from unskilled entry level to skilled employment, for it does neither. It is likewise to be distinguished from seniority practices rooted in "racially segregated local unions," and those in which there is factual showing of employer-union connivance to maintain racial segregation.[65] For it equally affects white, black or brown (A. 49), who enter the job classification at top rate, and is a necessary protection of job security for workers of all races.

It is thus clear why the courts below have refused the Government's attempt to eliminate the existing seniority system—and why the Government has not sought review of that refusal. For here, as in *Franks,* while maintaining the present system, those adversely affected by the employer's racial discrimination in hire and assignment may be awarded "the seniority status they would have individually enjoyed under the present [seniority] system but for the [employer's] discriminatory refusal to hire [or transfer]." 47 L. Ed. 2d at 448.

[65] The Court of Appeals' attempt to equate this seniority system with those in *United States* v. *Jacksonville Terminal Co.*, 451 F.2d 418 (C.A. 5, 1971), cert. denied, 406 U.S. 906 (1971); *Local 189, United Papermakers and Paperworkers* v. *United States*, 416 F.2d 980 (C.A. 5, 1969); and *Quarles* v. *Philip Morris, Inc.*, 279 F.Supp. 505 (E.D. Va., 1968) will not do. Those cases are inapposite on the facts. They involve line-of-progression seniority systems in industrial plants, where minorities are limited to menial, entry-level jobs—and blocked from advancing by the seniority system established on a racial basis. Factual showings of segregated unions, and employer-union connivance to deprive minorities of job opportunity distinguish those cases from this. In none of them did the union, as here, advocate the grant of "rightful place" to victims of discrimination.

If the seniority system is not *per se* invalid, the question could remain—does the union insist that it be administered to "lock in" the victims of racial discrimination? The answer is "no." To the contrary, the union insisted upon, and the employer agreed to, Article 38 of the National Master Freight Agreement which provided (A. 816):

> The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin.

Moreover, it is undisputed that the collective bargaining agreement is administered through a grievance procedure by which victims of discrimination, or those denied proper seniority, are regularly made whole by grievance awards ". . . including seniority if it is found that the employer should have put a man to work at a certain time and failed to give him his rights, full seniority." (A. 680.)[66]

Consistent with all the above, throughout this litigation, IBT has insisted that "Any blacks or SSA's as to whom there is evidence that they have been affected by racial discrimination should be accorded seniority

[66] That none of those asserted to be victims attempted to utilize this grievance and arbitration machinery may be some evidence that they were not adversely affected by T-DC's alleged discrimination.

However that may be, IBT should not be faulted for failure to provide a remedy, when no "victim" ever chose to initiate contract procedures to obtain seniority.

and all other contract rights as of the date of the proven unlawful discrimination—i.e., those who sought employment in a particular unit and were denied because of race should be held to have entered that employment as of the date of the unlawful discrimination—and this unit seniority should be allocated accordingly." IBT Brief to Court of Appeals at pp. 13-14.

This IBT position, urged throughout this litigation,[67] is wholly consistent with that announced in *Franks* v. *Bowman*, that racial victims are to be awarded "the seniority status they would have individually enjoyed under the present system but for the discriminatory refusal to hire." —— U.S. ——, 47 L.Ed.2d at 448.

We have shown that the seniority system does not violate the statute. Nevertheless, IBT is party to this action—and has always agreed that victims of racial discrimination should be "made whole." We are thus in a position similar to a Rule 19(a) defendant—properly in the litigation only so that full relief can be provided. Accordingly, we now address the issue of remedy.

2. The Proper Remedy for Unlawful Discrimination

A central purpose of Title VII is "to make persons whole for injuries suffered on account of unlawful employment discrimination." *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 at 418. To effectuate this "make whole" objective, Congress in § 706(g) vested broad equitable discretion in the federal district courts to

[67] Also urged by the union, and adopted by the District Court in *Bing* v. *Roadway*, See 485 F.2d at 451. Likewise, in *U.S.* v. *Leeway*, IBT urged the same position, See 1974 CCH—EPD para. 5285; See also *Thornton* v. *East Texas Motor Freight*, *supra* fn. 58; *Sagers* v. *Yellow Freight Systems, Inc.*, *supra* fn. 58.

"order such affirmative action as may be appropriate which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . ., or any other relief as the court deems appropriate." *Ibid.*

The legislative history of the 1972 amendment to Title VII as noted in *Franks* demonstrates; —— U.S. ——, 47 L.Ed.2d at 461:

> [T]he Act is intended to make the victims of unlawful employment discrimination whole and . . . the attainment of this objective . . . requires that persons aggrieved by the consequences and effects of the unlawful employment practice be, so far as possible, restored to a position where they would have been were it not for the unlawful discrimination. Section by Section Analysis of HR 1745, accompanying The Equal Employment Opportunity Act of 1972—Conference Report, 118 Cong. Rec. 7166, 7168 (1972). This is emphatic confirmation that federal courts are empowered to fashion such relief as the particular circumstances of a case may require to effect restitution, making whole insofar as possible the victims of racial discrimination in hiring.

And as this Court further held in *Franks supra* at 461-462:

> Adequate relief may well be denied in the absence of a seniority remedy slotting the victim in that position in the seniority system that would have been his had he been hired at the time of his application. It can hardly be questioned that ordinarily such relief will be necessary to achieve the "make-whole" purposes of the Act.

The Act, its legislative history and the Court's interpretations all point to intent to "make whole."

At the same time, *Griggs*[68] teaches that no one is to receive preferential treatment, for "discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed." 401 U.S. at 434.

Remedies under Title VII, like remedies provided under the National Labor Relations Act, 29 U.S.C. §160(c)—the model for § 706(g)—may include "affirmative action" redressing the wrongs incurred by an unlawful employment practice. But these, like the NLRB remedies upon which they are based, are designed to make "the employees whole, and thus restor[e] the economic status quo that would have obtained but for the company's wrongful [act]." *NLRB* v. *J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 263, cited in *Franks* at —— U.S. ——, 47 L.Ed.2d at 464.

Albemarle, Franks and the long line of NLRB cases all require "make whole" remedies. These require "*an award of seniority equivalent to that which they would have enjoyed but for the illegal conduct.*" *Franks, supra* at 464.

The fashioning of appropriate decrees applying the above remedies "involves the sound equitable discretion of the district courts." *Franks, supra,* 47 L.Ed. 2d at 465.

In this case the District Court has exercised an informed discretion, and specified the rationale by which it arrived at a remedy, viz, P.A. 62:

> This Court, in fact, does hold that some were not injured by being a member of the class, and that those who were injured were injured in varying

[68] *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971).

> degrees. There are no degrees of discrimination —discrimination is discrimination, and if made on the basis of race is deplorable whatever the degree; however, there *are* degrees of injury due to that discrimination—and this is important in determining the equitable relief this Court should afford these individuals.

Accordingly, the relief accorded by the trial court to minority employees was apportioned in accordance with the trial court's view of the degree to which each was damaged by the employer's racial discrimination. Four sub-groups of the minority employees were specified, and separate seniority remedies were tailored to the degree of injury which the trial court found had resulted from employer's racial discrimination. See pp. 13-15, *supra*.

The Court of Appeals rejection of the trial court's remedy was error. "Preference" was substituted for "make whole."

All minorities, the Court of Appeals says, are entitled to qualify for road jobs, "and, if they qualify for those jobs, to be permitted to exercise their full seniority in such jobs, including bidding and layoff." P.A. 34. The Circuit Court rules "that for all members of the class there should be full company employment seniority carryover for bidding and layoff purposes." (P.A. 38.)

There is no basis for an implied finding that all blacks and SSA city employees would have been on the road "but for" the employer's discrimination. To the contrary, there are trial court findings that 30 "have suffered severe injury;" others named "fall within a gray area" and were very possibly the objects

of discrimination and . . . were likely harmed," as to others "the evidence fails to show that there was any injury or harm to them as a result of the [employer's] discriminatory practices," and as to a final group there was "no evidence of discrimination against themselves . . ." (P.A. 64-65.)

These findings were not challenged as "clearly erroneous," or otherwise. Yet the Court of Appeals essayed a *de novo* assessment of the record, and concluded that regardless of whether they were victims of discrimination—all were entitled to seniority preference.

In so doing, it approved the very novel suggestion contained in the Government's brief [69] that "introduction of testimony . . . [as to the extent individuals seeking relief were damaged by racial discrimination] would be unduly burdensome on the parties and wasteful of the Court's time." The Court of Appeals itself concluded: ". . . it would defy reason and waste precious resources for the Court either to require or permit individualized proof for every member of a class here numbering nearly 400 . . ." (P.A. 34.)

The Court of Appeals thus has set aside the findings of the trial court which heard and determined such individualized proof involving those whom the Government had discovered as possibly racial victims and has granted to all—the few victims and the many non-victims alike—a seniority preference denied to whites.

And to compound the error, the Circuit Court refuses to apply "the analytical steps delineated by the recent case of *McDonnell Douglas* v. *Green*, 411 U.S. 792

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[69] Government Brief to Court of Appeals at p. 44.

(1973);" on the ground that criteria by which discrimination is proved in an individual's suit under §§ 703 and 704 are "inapplicable to a pattern and practice suit." 517 F.2d at 316; P.A. 27.

Respectfully, we suggest it does not make sense to accord more relief—or require a lesser proof—when the government sues, than when an individual makes the claim. In either instance, the inquiries are: was there racial discrimination—was the individual damaged thereby? What will it take to put the worker in the position he would have enjoyed absent discrimination? It will not do to evade these inquiries—and grant pay or seniority or other employment benefits solely on the basis of race.

The statistics as to road-city employment demonstrate [70] what the record testimony shows [71]—that many workers prefer city driving rather than the rigors of the road. There is no more basis to presume that all black's and SSA's would have preferred road work than that all whites would have done so. Accordingly, there is just no basis upon which it can be said that all blacks' and SSA's "rightful place" should be on the road. Yet that is the necessary unstated premise upon which all of them are granted seniority preference. Otherwise, the preference is granted solely to provide racial balance, a result which the statute forbids.

We have seen that § 704(j), 42 U.S.C. § 2000e2(j), bans "preferential treatment to any individual or to any group because of the race, color . . . or national origin of such individual or group on account of an im-

[70] *Supra*, p. 33.

[71] *Supra*, pp. 28-29.

balance which may exist with respect to the total number or percentage of persons of any race, color . . . or national origin employed by any employer . . . ."

The legislative history underlines clear congressional intention not to require achievement of racial balance by giving preferential treatment to any individual or group.[72]

Here, as in *Franks*, the Fifth Circuit failed to focus on the overall substance of Title VII. In *Franks*, it construed § 703(h) narrowly and out of context, and in refusing an appropriate "make whole" remedy, provided *less* remedy than the statute provides.

Here it reads § 703(g) broadly and out of context and thus provides *more* remedy than the statute permits. Respectfully, we submit that because the court below failed to focus on the broad design of Title VII, it construed that one section out of context and imported to it a meaning quite different from that intended by Congress. As we show, the central concern which preoccupied Congress in drafting Title VII was to be sure that it had made sufficiently plain the line between abolishing discrimination, which was its goal, and providing preferential treatment, which all members wished to preclude. The debate on the floor of Congress was not over whether that line should be drawn—everyone agreed that it should—but over what language was necessary to make that line unmistakably clear. Section 703(h) is but one of several provisions added to confirm this Congressional purpose. Prop-

[72] See "Legislative History of Titles VII and XI of Civil Rights Act of 1964," published by United States Equal Employment Opportunity Commission, at pp. 3005; 3187-3190; hereinafter referred to as "Leg. Hist."

erly construed, it precludes only "preferential" treatment. It merely accords a proven victim of discrimination his "rightful place": the place in the seniority system which he would be occupying but for the prior discrimination against him. The basic liability provisions, §§ 703(a), (c), speak of discrimination "against any individual," and the key remedial provision, § 706(g), states in its last sentence that courts may not furnish remedies to "an individual" unless he has proven that he has suffered employment disadvantage "on account of race, color, religion, sex or national origin." The drafters believed that these provisions, standing alone, made clear the dual Congressional objectives: on the one hand, to forbid discrimination and make discriminatees whole; on the other, to preclude preferential treatment of minorities *qua* minorities. As Senators Clark and Case, the floor managers of Title VII in the Senate, explained:

> "No court order can require hiring, reinstatement, admission to membership, or payment of back pay for anyone who was not discriminated against in violation of this title. This is stated expressly in the last sentence of section 707(e) [enacted as 706(g)] which makes clear what is implicit throughout the whole title; that employers may hire and fire, promote and refuse to promote for any reason, good or bad, provided only that individuals may not be discriminated against because or race, color, religion, sex or national origin."
>
> * * * *
>
> "There is no requirement in title VII that an employer maintain a racial balance in his work force. * * * It must be emphasized that discrimination is prohibited as to any individual: While the presence or absence of other members of the same minority group in the work force may be a relevant factor in determining whether in a given case a decision to hire or to refuse to hire was based on race, color, etc., it is only one factor, and the question in each case would be whether that individual was discriminated against." [73]

But notwithstanding the clarity of the bill's original language, there developed concern that Title VII would confer preferential rights upon minorities at the expense of the majority. The minority members asserted that the bill "under the cloak of protecting the civil rights of certain minorities, will destroy civil rights of all citizens of the United States who fall within its scope." [74] They listed a number of interests which would be "seriously impair[ed] by the passage of the bill." [75] Among these were the "seniority rights of employees in corporate and other employment." [76] They warned that Title VII "would destroy seniority." [77] They asserted that the bill's "true interest and purpose" was to achieve racial balance, not merely to end discrimination.[78] Dramatizing the threat to seniority which they perceived, the minority members declared:

> "*The provisions of this act grant the power to destroy union seniority.* The action of the Secretary of Labor already mentioned is merely the beginning, if this legislation is adopted. With the full statutory powers granted by this bill, *the*

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[73] Leg. Hist. 3044, 3040.

[74] Leg. Hist. 2064.

[75] *Ibid.*

[76] *Id.*, 2065.

[77] *Id.*, 2066.

[78] *Id.*, 2067-68.

extent of actions which would be taken to destroy the seniority system is unknown and unknowable.

"To disturb this traditional practice is to destroy a vital part of unionism. Under the power granted in this bill, if a carpenters' hiring hall, say, had 20 men awaiting call, the first 10 in seniority being white carpenters, the union could be forced to pass them over in favor of carpenters beneath them in seniority, but of the stipulated race. And if the union roster did not contain the names of the carpenters of the race needed to 'racially balance' the job, the union agent must then go into the street and recruit members of the stipulated race in sufficient number to comply with Federal orders, else his local could be held in violation of Federal law.

"Neither competence nor experience is the key for employment under this bill. Race is the principal, first, criterion." [79]

These accusations prompted a number of the bill's sponsors in the House to submit a statement of "additional views," in which they sought to allay the fears which the minority members had voiced.[80]

These assurances were sufficient for House passage. Senate opponents remained to be convinced.

Accordingly, the bill's Senate sponsors gave the assurances set forth in footnotes 12 through 17 of this Court's *Franks* Opinion, — U.S. —, 47 L.Ed. 2d at 458-460. A Department of Justice memorandum, submitted by Senator Clark, gave further assurance, viz.:

> "Finally, it has been asserted that title VII would impose a requirement for 'racial balance.' This is incorrect. There is no provision either in title VII or in any other part of this bill, that requires or authorizes any Federal agency or Federal court to require preferential treatment for any individual or treatment for any individual or any group for the purpose of achieving racial balance. No employer is required to hire an individual because that individual is a Negro. No employer is required to maintain any ratio of Negroes to whites, Jews to gentiles, Italians to English, or women to men. The same is true of labor organizations. . . ." [81]

[79] *Id.*, 2071 (emphasis in original).

[80] *Id.*, 2150 ff.

Despite these efforts to set fear at rest, it became necessary, in order to secure sufficient votes to end the filibuster, to include express language dealing with the subjects of racial balance and seniority (the present §§ 703(j) and (h)) as part of the package of amendments known as the Mansfield-Dirksen compromise. Senator Humphrey explained the sponsors' reason for accepting § 703(j):

> "* * * A new subsection 703(j) is added to deal with the problem of racial balance among employees. The proponents of this bill have carefully stated on numerous occasions that title VII does not require an employer to achieve any sort of racial balance in his work force by giving preferential treatment to any individual or group. Since doubts have persisted, subsection (j) is added to state this point expressly. This subsection does not represent any change in the substance of the title. It does state clearly and accurately what we have maintained all along about the bill's intent and meaning." [82]

[81] *Id.*, 3244-45.

[82] *Id.*, 3005.

The legislative history thus confirms that while Congress intended the proven victims of discrimination to be made whole, it did not permit anyone to receive preferential treatment. "Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed." *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 431 (1971). That is what the original substantive (§§ 703(a), (c)) and remedial (§ 706(g)) provisions of Title VII declared. That is what the legislation's sponsors stated again and again throughout the debates. Sections 703(h) and (j) were added—at the insistence of those whose votes were necessary to obtain passage of the bill—to make absolute that the statute could not be otherwise construed.

But the Court of Appeals' modifications of the collective bargaining agreement's job protection for laid-off employees, in the form of three-year recall rights (P.A. 41) and inter-terminal "bumping" rights for Southern road drivers (P.A. 42) do misconstrue this statute. For § 703(f) precludes racial preference, even for the purpose which the lower courts have viewed as beneficent, to "speed up the advancement of discriminatees into the LD [road] position." (P.A. 43).

Neither the three-year contractual recall rights for those incumbents who had been laid off, nor the "bumping" rights which the contract guarantees Southern area drivers was aimed at racial discrimination. Each is a conventional, valid collective bargaining aim which any union would seek for the protection of those it represents. Indeed, the Court of Appeals recognizes "that the Union contract provision [regarding recall rights] was not adopted for discriminatory purposes." (P.A. 41).

Yet the Court of Appeals quite candidly tailors the remedy here for the very purpose which Congress has proscribed to accelerate movement of minorities from city to road.[83]

In these circumstances, to do more than restore "rightful place"—to rewrite labor contracts "to speed up the advancement" of minorities is more than "make whole;" it is impermissible racial preference which the statute forbids.

CONCLUSION

We have shown that IBT has not engaged in any unlawful employment practice under Title VII, and that any employer violation may be wholly remedied by application of the suggestion made by IBT: placement of discrimination victims in the seniority positions each would have enjoyed "but for" the unlawful discrimination, consistent with this Court's *Franks* opinion.

This result accomodates the requirements of both the National Labor Relations Act[84] and Title VII. Every union which represents a mix of workers must comply with both the duty of fair representation under the former[85] and the ban against racial discrimination under the latter.

Those dual responsibilities, owed to employees of *all* races, colors and national origins, require unions to walk a narrow line. The Court of Appeals skews the balance when it decrees that blacks are to have senior-

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[83] See P.A. 31-32; 41; 43.

[84] 29 U.S.C. Secs. 151 ff.

[85] Cf., Vaca v. Sipes, 386 U.S. 171 (1967).

ity preference, just because they are black. The union must be permitted to meet its obligations under both acts, and to maintain its bona fide seniority system, subject to "rightful place" seniority for discriminatees.

For the reasons stated, the decision below should be reversed, the finding that IBT violated Title VII vacated, and the District Court directed to fashion a "make whole" seniority remedy only for the individual victims or racial discrimination.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1976

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
PETITIONER

v.

UNITED STATES OF AMERICA AND EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

T.I.M.E.-D.C., INC., PETITIONER

v.

UNITED STATES OF AMERICA AND EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-636

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETITIONER

v.

UNITED STATES OF AMERICA AND EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

No. 75-672

T.I.M.E.-D.C., INC., PETITIONER

v.

UNITED STATES OF AMERICA AND EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

OPINIONS BELOW

The opinion of the court of appeals (A.P. 1-44)* is reported at 517 F.2d 299. The final order of the district court entered on March 2, 1973 (A.P. 94-116), and the order amending the final order entered on March 19, 1973 (A.P. 117-118), are not officially reported. An order entered by the district court on December 13, 1971 (A.P. 45-49) is reported at 335 F.

*"A.P." refers to the Appendix to Petition for Certiorari filed by the International Brotherhood of Teamsters in No. 75-636.

Supp. 246. Other orders and opinions of the district court are not officially reported but are unofficially reported as follows:

> Order entered on January 20, 1972 (A.P. 50–55) 4 FEP Cases 875; 4 EPD ¶7881.
>
> Decree in Partial Resolution of Suit (consented to by the United States and T.I.M.E.–D.C.) entered on May 12, 1972 (A.P. 85–93), 4 EPD ¶7831.
>
> Memorandum Opinion entered on October 19, 1972 (A.P. 56–78), 6 FEP Cases 690; 6 EPD ¶8979.
>
> Supplemental Opinion entered on December [illegible], 1972 (A.P. 79–84), 6 FEP Cases 690, 703; 6 EPD ¶8979, p. 6161.

JURISDICTION

The judgment of the court of appeals was entered on August 8, 1975. The petitions for a writ of certiorari were filed on October 29, 1975, and November 6, 1975, respectively, and were granted on May 24, 1976. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court and the court of appeals correctly found, on the basis of statistical evidence and extensive pretrial and trial testimony concerning individual acts of discrimination, that T.I.M.E.–D.C. had engaged in a pattern of discriminatory employment practices against blacks and Spanish-surnamed persons in violation of Title VII of the Civil Rights Act of 1964.

2. Whether applications of a seniority system that penalize incumbent employees who transfer to job

classifications from which they previously were discriminatorily excluded and perpetuate the effects of a pattern of exclusion of blacks and Spanish-surnamed employees from higher paying, more attractive, traditionally white jobs, violate Title VII.

3. Whether, in a case where a pattern and practice of employment discrimination had been demonstrated, an incumbent minority employee seeking rightful place seniority relief who is a member of the affected class (1) is entitled to a rebuttable presumption that he was a victim of discrimination, and (2) need not necessarily have applied for a vacant rightful place job to be entitled to relief.

4. Whether the court of appeals correctly held that, in the circumstances of this case, the rights of members of the affected class to compete for future vacancies at their home terminals or elsewhere should not be subordinated either to the rights of employees transferring from other terminals or to the rights of employees with less seniority who are on layoff.

STATUTORY PROVISIONS INVOLVED

Several pertinent provisions of Title VII of the Civil Rights Act of 1964 are set forth in the Appendix to Petition for Certiorari in No. 75–636 (A.P. 119–124).

In addition, Section 706(g) of Title VII, 78 Stat. 261, as amended, 42 U.S.C. (Supp. V) 2000e–5(g), provides in pertinent part:

> If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful

employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay * * * or any other equitable relief as the court deems appropriate.

STATEMENT

These petitions arise from two Title VII cases brought by the United States pursuant to Section 707 of the Civil Rights Act of 1964, 78 Stat. 261–262, as amended, 42 U.S.C. (Supp. V) 2000e–6 (A.P. 122) [1] alleging a pattern of employment practices that discriminate against blacks and Spanish-surnamed Americans on the grounds of race and national origin. The first suit, filed on May 15, 1968, in the United States District Court for the Middle District of Tennessee, Nashville Division (A. 2),[2] alleged discriminatory hiring, assignment, and promotion practices against blacks at the Nashville terminal of T.I.M.E. Freight, Inc., a common carrier by motor freight (A.P. 3).

The second suit was brought on January 14, 1971, against T.I.M.E.-D.C., Inc. ("T.I.M.E.-D.C." or "the Company") and the International Brotherhood of Teamsters ("Teamsters") in the United States Dis-

[1] On May 24, 1974, the United States Court of Appeals for the Fifth Circuit entered an order substituting the Equal Employment Opportunity Commission for the United States as plaintiff (see 42 U.S.C. (Supp. V) 2000e–6 (c) and (d), A.P. 123–124) but retaining the United States as a party for purposes of jurisdiction, appealability, and related matters.

[2] "A." refers to the Appendix filed jointly in Nos. 75–636 and 75–672.

trict Court for the Northern District of Texas, Lubbock Division (A. 2, 4–8). T.I.M.E.-D.C., a successor of T.I.M.E. Freight, Inc., is an interstate motor carrier of general commodities and is the product of ten mergers over a 17-year period (A.P. 5). T.I.M.E.-D.C. currently has 51 terminals and operates in 26 states and three Canadian provinces (A. 43). The Teamsters is an unincorporated labor organization, and certain locals chartered by it are parties to collective bargaining agreements with T.I.M.E.-D.C. (A. 42). All of T.I.M.E.-D.C.'s line drivers and the vast majority of its city employees and servicemen work under collective bargaining agreements negotiated for them by various committees of the Teamsters (A.P. 6, 17).[3] The complaint against T.I.M.E.-D.C. and the Teamsters alleged a pattern and practice of hiring, assignment, and promotion discrimination against blacks and Spanish-surnamed Americans throughout the T.I.M.E.-D.C. system; it specifically alleged that the seniority system to which the defendants are parties violates Title VII by perpetuating the effects of past discrimination (A. 6).

The two suits were consolidated in the United States District Court for the Northern District of Texas,

[3] The National Master Freight Agreement is reproduced in full in Pl's Ex. 203(a) (A. 284), which is entitled "National Master Freight Agreement and Southern Conference Area Over-the-Road Supplemental Agreement." Other area supplemental agreements in Pl's Exs. 203(a), 203(b), 203(c) and 203(d) are also part of the same National Master Freight Agreement. The National Master Freight Agreement and Southern Conference Area Over-the-Road Supplemental Agreement is also contained in Pl's Ex. 202, portions of which are printed in the joint appendix (A. 795–840).

Lubbock Division (A. 3), and a trial was held in May 1972. On May 12, 1972, the district court entered a decree consented to by the United States and T.I.M.E.-D.C. ("Decree in Partial Resolution of Suit") that resolved a number of issues relating to T.I.M.E.-D.C.'s affirmative obligation to recruit and hire qualified blacks and Spanish-surnamed Americans, and monetary compensation for those blacks and Spanish-surnamed Americans alleged to be individual and class victims of discrimination (A.P. 85–93). Left unresolved were whether the defendants were in violation of Title VII, the lawfulness of certain aspects of the seniority system, and the appropriate non-monetary relief.

A. PROCEEDINGS IN THE DISTRICT COURT

In a memorandum opinion dated October 19, 1972, and a supplemental opinion of December 6, 1972 (A.P. 56–84), the district court issued its findings and conclusions based on the trial of the remaining issues. It held that T.I.M.E.-D.C. had engaged in a pattern and practice of discrimination in violation of Title VII and that the defendant unions had also violated the Act by giving force and effect to a seniority system which perpetuated the effects of employment discrimination.

1. Evidence

The district court based its conclusions on a combination of statistical evidence and pretrial and trial testimony, the core of which can be briefly summarized as follows:

The relevant non-managerial employees at T.I.M.E.–D.C. are divided into three basic job classifications: (a)

line driver; (b) city driver, dockman and hostler (known as "city operation" jobs); and (c) serviceman (which includes tireman) (A.P. 5–6).[4] Line drivers (also known as road drivers) transport freight in tractor-trailer units over-the-road between Company terminals. City drivers pick up and deliver freight within a specified radius of a terminal. Dockmen (also known as checkers) load, unload and check freight at the terminal's dock. Hostlers drive tractor-trailers around the terminal yard and move trailers in and out of the dock.[5] Servicemen fuel, wash, and grease trucks and change tires. They also hook and unhook road and city tractors and trailers and drive them into and out of the shop.[6]

Generally, T.I.M.E.–D.C. and its predecessors had no minimum educational requirements for line driver, city driver, hostler, dockman or serviceman.[7] The

[4] The employees in these classifications are, with few exceptions, covered by separate collective bargaining agreements, or separate supplemental agreements to the National Master Freight Agreement. See Pre-Trial Order Appendix B (A. 132–171). They accumulate seniority on separate seniority rosters. (A.P. 6).

[5] Dep. of Kenneth N. Gibbs, Jr., Terminal Manager (Nashville), pp. 28–29. The depositions and summaries of depositions were admitted in evidence as exhibits and were not formally retranscribed as part of the trial transcript (A. 387–390, 277–278).

[6] Dep. of Dallas R. Anderson, Regional Maintenance Manager (Nashville), pp. 117–118, 136.

[7] Summary of dep. of James W. Frazier, Terminal Manager (Hayward), p. 13; summary of dep. of Tobey Beck, Ass't. Terminal Manager (Los Angeles), p. 9; summary of dep. of Jackson B. Stroud, Operations Manager (Atlanta), pp. 2, 4 (all in Pl's Ex. 240 (A. 277–278)); dep. of Homer W. Burns, former Shop Superintendent (Nashville), p. 345.

experience requirement generally for line driver was experience driving tractor-trailer units and, for city driver, experience driving the type of unit (tractor-trailer or straight truck) to be operated on the job.[8]

City operation jobs normally pay more than the job of serviceman;[9] however, both job categories usually pay less than the job of line driver. In 1969, line drivers averaged from $1,300 to $5,500 more per year than city drivers (A. 898). As the district court found (A.P. 59), line driver jobs are considered more desirable than city driver jobs because the line drivers generally receive higher pay and are not required to engage in the physically demanding tasks of loading and unloading the trucks (see A. 339–340).

As of March 31, 1971, T.I.M.E.–D.C. had 6,472 employees, of whom 314 (5%) were black and 257 (4%) were Spanish-surnamed Americans (A. 43). A large majority of the black (83%) and Spanish-surnamed American (78%) employees were assigned to city operation (city driver, dockman, hostler) or serviceman (including tireman) jobs (A. 43–48). By contrast, less than 39 percent of the 5,901 employees who

[8] Dep. of Kenneth N. Gibbs, Terminal Manager (Nashville), pp. 27–28; dep. of William E. Franzen, Highway Operations Manager (Denver), pp. 3–4, 10–11; dep. of Anthony W. Lillywhite, Driver Supervisor (Los Angeles) [5–18–71], pp. 6–12; summary of dep. of Jackson B. Stroud, Operations Manager (Atlanta), pp. 2–4 (in Pl's Ex. 240 (A. 277–278)).

[9] See Pl's Ex. 230 (Los Angeles, Nashville, Oklahoma City and San Francisco terminals). At the Denver terminal, servicemen receive a higher rate of pay than city operation employees. Pl's Ex. 230, Tab D.

were other than black or Spanish-surnamed were assigned to such positions. The great majority of non-minority employees held line driver, office and supervisory, and mechanic jobs (A. 43–48). Of the 2,545 persons employed as city drivers, dockmen, and hostlers, 195 (or 7.7%) were black, and 178 (or 7.0%) were Spanish-surnamed (A. 43–44, #14).

Although T.I.M.E.–D.C.'s major terminals employing line drivers are located in metropolitan areas having substantial minority population (A.P. 18–19, 68–72), of the 1,828 line drivers at the Company as of March 31, 1971, only 8 (or 0.4%) were black and only 5 (or 0.3%) were Spanish-surnamed American. None of the eight blacks was employed as a line driver until 1969, although the government's Title VII suit with respect to the Nashville terminal had been filed on May 15, 1968 (A. 43–44 #14).[10] With one exception, no black was ever employed on a regular basis as a line driver by T.I.M.E.–D.C. or any of its predecessor companies prior to 1969 (A.P. 20–21).

The testimonial evidence showed that the statistics indicating disparate employment opportunities for blacks and Spanish-surnamed individuals did in fact reflect discriminatory hiring practices. The testimony showed that numerous qualified black and Spanish-surnamed persons who sought initial assignment or transfer to line driving positions at various terminals of the Company were denied such jobs after being

[10] A.P. 19; Pl's Ex. 204. Ex. 204 is a printout showing all of T.I.M.E.–D.C.'s employees as of March 31, 1971, and it indicates, by terminal, each employee's name, job employed date and ethnic code (A. 279–280). The ethnic codes appear on the front sheet of the exhibit.

given false and misleading information about requirements, opportunities, and application procedures (A.P. 60–61, 24).

The evidence concerning the Nashville and Memphis terminals illustrates the manner in which statistics and testimonial evidence combined to reveal a pattern and practice of discrimination. For example, as of March 31, 1971, the statistics on employee complement by job category at the Nashville terminal revealed that blacks had not obtained any of the 181 line driver and city operator jobs.[11] The Terminal Manager stated in 1966 that blacks had never been considered for any job except serviceman at the terminal (A. 374–376, 379).[12] The district court also found (A.P. 61) that the Company has trained whites, but not blacks, to be mechanics, partsmen and shop supervisors at the Nashville terminal.[13] The same statistical pattern of exclusion of blacks from line driving jobs was evident at the Memphis terminal, where no line driver jobs went to blacks prior to 1969 and only 3 of 104 such jobs were held by blacks thereafter.[14] Yet, from about 1956 until sometime in 1958, the Company permitted white employees from the city operation (and at least one

[11] Pl's Ex. 204, pp. 83–94.

[12] The job of serviceman (including tireman) at the Nashville terminal pays less than the jobs of dockman, hostler, city driver, partsman, mechanic and line driver. Pl's Exs. 230 (Nashville); 231 (A. 898).

[13] Dep. of James E. Mince (Nashville), pp. 182–189; Pl's Ex. 206; Pl's Ex. 89 (to Nashville deps.).

[14] Pl's Ex. 204 pp. 57–68.

serviceman) to drive extra trips on the line,[15] and a number of these white employees later became regular line drivers.[16] Several black city drivers at the terminal requested that they also be permitted to drive on the line during the period 1956–1958; however, they were not allowed to do so.[17] Testimony indicated that the Memphis terminal manager eventually stopped the practice because black city drivers were asking to drive such trips and he would never permit blacks to drive on the road.[18]

The district court found that the seniority system resulting from the collective bargaining agreements acted to perpetuate T.I.M.E.-D.C.'s discriminatory employment pattern (A.P. 61). Under that system, an employee who moves from a job covered by one collective bargaining agreement to a job covered by another collective bargaining agreement at any of the Company's terminals must give up his seniority for all

[15] Dep. of W. G. Gately, p. 5; dep. of Arthur L. Thornton, p. 6; dep. of Fontaine E. Yount, Jr., p. 20 (all taken at Memphis).

[16] The record shows that the following whites transferred from city operation or serviceman jobs to line driver at the terminal during the period 1956–1958: John P. Poston, Jessie L. Robertson, Jack P. Jones, Ruby Arnold, J. W. Stanford, Max Seeley. *Sources:* Summary of dep. of Barton O'Brien, Terminal Manager (Memphis), pp. 10–12, in evidence as part of Pl's Ex. 240 (A. 277–278); Pl's Exs. 177, 178, 179, 182, 180 (to Memphis deps.); dep. of Fontaine E. Yount, Jr., pp. 18–19; dep. of W. G. Gately, pp. 21–22 (all taken at Memphis).

[17] Dep. of Arthur L. Thornton, pp. 5–8; dep. of James H. Walker, pp. 6, 9; dep. of James L. McNeal, pp. 5–6; summary of deps, of Charles D. Glover, pp. 1–2, and R. D. Parker, p. 2, in Pl's Ex. 240 (A. 277–278) (all taken at Memphis).

[18] Dep. of Fontaine E. Yount, Jr., pp. 24–25; dep. of W. G. Gately, pp. 16, 19–20 (taken at Memphis).

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purposes except fringe benefits (A. 48). City operation and serviceman jobs are covered by collective bargaining agreements (or area supplemental agreements to the National Master Freight Agreement) different from those covering line driver jobs (A. 42, 132–171). Consequently, if qualified black or Spanish-surnamed American employees desire to move to vacancies in the job of line driver, they are required to relinquish all of their accumulated seniority for purposes of job bidding and protection against layoff (A.P. 7).[19]

These seniority provisions are embodied in a National Master Freight Agreement and area supplements, negotiated every three years by the National Over-the-Road and City Cartage Policy and Negotiating Committee of the Teamsters, and in various area supplements to that national agreement negotiated by the National Committee and various area committees

[19] The seniority rules have implications for job transfer between geographic locations as well as between job categories. Employees of T.I.M.E.–D.C. can normally exercise their seniority only at the terminal where they are originally hired. However, line drivers domiciled at those terminals of the Company covered by the Southern Conference Area Over-the-Road Supplemental Agreement work under "modified system seniority". Under that system, if a line driver is laid off, he can exercise his seniority to take a line driver job at any other terminal covered by the agreement, if there is either a vacancy or a line driver junior to him at the other terminal. If there is no vacancy, but only a junior line driver at the other terminal, the transferring line driver can "bump" that junior line driver out of his job (A. 49). Modified system seniority also requires that, when a terminal has an opening in a line driver job, it must first offer the job to laid off line drivers at all other terminals covered by the Southern Conference Supplemental Agreement before filling the opening with any other person (A. 49–50).

of the Teamsters. The Negotiating Committee represents locals of the Teamsters, including those with which T.I.M.E.–D.C. has agreements, for purposes of collective bargaining with the motor carriers. The Committee is a party to both the National Master Freight Agreement and its area supplemental agreements (A. 797). Each local union gives the Committee a power of attorney to negotiate on its behalf (A.P. 17). Since the Teamsters is a highly centralized international union (A.P. 17), most of the Negotiating Committee's members are either officers or employees of the International, including its chairman, Frank E. Fitzsimmons, who is the General President of the International (A. 649–651). The Area Conferences of the Teamsters are "subject to the unqualified supervision, direction and control of the General President" and they must function under the rules prescribed in bylaws approved by the General President (A. 787). Each local union must affiliate with the Area Conference having jurisdiction over it (A. 788). The bylaws of each local union are also subject to the approval of the General President; and if a majority of local unions vote to hold area, national or industry-wide negotiations, all involved local unions "must participate" and "shall be bound" by the contract if approved by the majority of the votes cast by the membership covered by the contract proposal (A. 751, 789).

2. Decision of the District Court

The district court's memorandum opinion of October 19, 1972, found "[a]ll of the evidence * * * ample to show by a preponderance of the evidence"

that T.I.M.E.–D.C. was engaged in a pattern and practice of discrimination in violation of Title VII (A.P. 61–62).[20] It also found that the union defendants were in violation of Title VII for their part in negotiating contracts with the Company, which "while being neutral on their face, do, however, operate to impede the free transfer of minority groups into and within the company" (A.P. 61–62).

The government had submitted a list of incumbent employees as of March 31, 1971, for whom it sought transfer and seniority relief, basically composed of blacks and Spanish-surnamed Americans assigned to city operation and serviceman jobs at those company terminals which had a line driver operation.[21] The district court found that all of the 358 incumbent black and Spanish-surnamed American employees of the Company for whom the government sought relief were members of an affected class of discriminatees and it ruled that all of these individuals were entitled to transfer, if qualified, to future vacancies in jobs from which they had been excluded as a class (A.P. 62–

[20] The relief ordered by the district court in its opinions of October 19 and December 6, 1972, was embodied in a final order which it entered on March 2, 1973, and later amended in part on March 19, 1973 (A.P. 94–118).

[21] The list included minority employees hired at terminals that had a line driver operation during the period in which T.I.M.E.–D.C. was practicing a plan and pattern of discrimination. Relief was not sought for blacks and Spanish-surnamed Americans hired at a particular terminal after the date on which the terminal had employed a minority group member in a line driver position. Nor was relief sought for minority employees hired during the period after the last white was hired as a line driver at that particular terminal.

65).[22] The district court ordered that all discriminatees who transfer would retain their company seniority for fringe and retirement benefits (A.P. 66).[23]

However, the district court qualified the class relief in several respects. First, it ruled that a job opening would not be treated as a vacancy for transfer relief purposes where it can be filled by a person on the seniority roster where the job occurs who has been on layoff for not longer than three years (A.P. 81, para. IV).[24] Second, based upon the evidence submitted by

[22] The district court denied relief to three blacks and one Spanish-surnamed American (see Appendix D of memorandum opinion, A.P. 78). However, these four persons were applicants for jobs at the Company and not incumbents. In a supplemental opinion of December 6, 1972 (A.P. 80), the district court granted relief to these four persons, as well as to three whites originally denied relief in Appendix D of its memorandum opinion.

[23] The district court had previously ruled that the Teamsters International was a proper party to represent and defend the seniority status of its members and that the Teamsters' locals which represented T.I.M E.–D.C. employees were not indispensable parties (A.P. 50–55). The court of appeals subsequently affirmed those rulings (A.P. 16–18).

[24] This ruling, however, simply incorporated the existing policy under the collective bargaining agreements in effect at the Company which cover employees in jobs represented by the Teamsters or its affiliated locals. These agreements provide that individuals on layoff for up to three years have a prior right to be recalled when openings again occur in those jobs. See, *e.g.*, National Master Freight Agreement, Art. 5, Sec. 1 (A. 804); Southern Conference Area Over-the-Road Supplemental Agreement, Art. 42, Sec. 1 (A. 823); Pl's Ex. 203(b), Western States Area Over-the-Road Supplemental Agreement, Art. 43, Sec. 1(a), (d), pp. 11, 12; Pl's Ex. 203(c), Central States Area Over-the-Road Supplemental Agreement, Art. 43, Sec. 1, p. 94.

the government in proving the pattern and practice of discrimination, the court divided the minority incumbents into three subgroups reflecting their individual "degree of injury" (A.P. 62–64). Only with respect to 29 minority employees, whose testimony was actually placed into evidence, did the court find that "clear and convincing" proof of discrimination which, in its view, alone merited a carryover of seniority for purposes of bidding for jobs and protection against layoffs (A.P. 64).[25] Even for these individuals, seniority carryover was limited to July 2, 1965, the effective date of Title VII, because the effect on innocent non-minority employees of full seniority carryover outweighed "the advantage of restoring, as nearly as possible, an individual to the position that he would have enjoyed had there never been discrimination" (A.P. 63).[26]

The court established a second subgroup made up of individuals who "were likely harmed" (A.P. 64), but as to whom the evidence which the government had presented was "not sufficient to show clear and convincing specific instances of discrimination or harm resulting therefrom" (A.P. 64). Their seniority carryover was limited to January 14, 1971, the filing date of the Texas suit. As to the third subgroup, the court was unable to determine whether "these individuals were either harmed or not harmed individually" (A.P. 65). It limited their relief to priority in filling vacancies, refusing to award retroactive seniority (*ibid.*).

[25] The names of these 29 minority employees and the relief given them are set forth in Appendices B and C to the memorandum opinion (A.P. 73–77). A total of 34 minority employees were granted relief in Appendices B and C; however, 4 of these (Vestal, Stinson, Hix and Barnes) were applicants for jobs at the Company rather than incumbents and a fifth (Zeno) was given relief only with respect to the equipment assigned him.

[26] In its memorandum opinion, the district court established July 2, 1964, as the earliest date for seniority carryover purposes (A.P. 64). It subsequently changed this date to July 2, 1965, in its supplemental opinion of December 6, 1972 (A.P. 82).

B. THE DECISION OF THE COURT OF APPEALS

On appeal, the court of appeals affirmed the district court's finding that both T.I.M.E.-D.C. and the Teamsters had engaged in a pattern of employment practices violative of Title VII. The court stated: "[o]ur careful consideration of the record has convinced us that * * * the District Court was entitled to conclude that the defendants have failed to rebut the plaintiffs' prima facie case of employment discrimination * * * that the defendants have engaged in an extensive pattern of employment practices unlawful under Title VII and that strong remedial action is warranted" (A.P. 29).

However, the court of appeals held that the district court had erred in using testimony that the government had introduced in establishing the pattern of discrimination to delimit the remedies available to individual members of the affected class. Instead, the court of appeals ruled, the structure of a pattern and practice suit precludes any requirement for "individualized proof for every member of a class here numbering 400 but frequently involving thousands" (A.P.

34).[27] Consequently, the appellate court reversed the district court's gradations of the affected class into subgroups of differing transfer and seniority rights (A.P. 34). "[F]or all members of the class there should be full company employment seniority carryover for bidding and layoff purposes * * *" (A.P. 38).

The court of appeals also rejected the July 2, 1965 limitation on seniority carryover. Instead, it made all relief subject to the "qualification date principle" (A.P. 38), whereby the seniority carryover date for bidding and layoff purposes is determined by (1) the date the incumbent minority employee possessed the experience necessary to qualify for that job, and (2) the date thereafter when a vacancy existed (A.P. 32, 38).[28] The court of appeals did not specifically discuss

[27] As the court of appeals noted (A.P. 29–31, n. 33), the appeal pertained to the rights of incumbent employees who were members of the affected class rather than the rights of rejected applicants for new hire. (The district court had given relief to some individuals in the latter category, and not to others.) The court of appeals did direct, however, that the district court have great flexibility on remand to consider former applicants who never became incumbents, particularly in light of the fact that this Court had granted certiorari in *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747 (decided subsequent to the court of appeals' decision here).

[28] See, A.P. 32, n. 35 which in turn refers to *Rodriguez* v. *East Texas Motor Freight*, 505 F. 2d 40, 63 n. 29 (C.A. 5). The Fifth Circuit has further clarified its position in *Sagers* v. *Yellow Freight System, Inc.*, 529 F. 2d 721, 732.

The court of appeals further recognized that if an affected class member had been denied the opportunity to take tests or otherwise obtain the requisite experience for a job in the past, his qualification date for purposes of determining seniority carryover should normally be fixed as of the date in the past

petitioners' opportunity to prove that some individuals were not in fact victims of previous discrimination (cf. *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747, 772), but merely held that showings of individual injury were not required for every member of the affected class in the liability stage and that "[w]hatever evidentiary hearings are required for individuals can be postponed to the remedy" (A.P. 34).

Finally, the court of appeals temporarily modified the seniority agreements in two respects. The court ruled that to allow laid off line drivers a three-year priority on filling future openings in line driver jobs over the bidding rights of more senior members of the affected class would unduly impede the eradication of past discrimination. Hence, it directed that when a vacancy which is not purely temporary arises in a line driver job, a member of the affected class may compete against any line driver on layoff for that vacancy on the basis of his carryover seniority date, with the opening to go to the competing individual with the greatest seniority (A.P. 41). The court of appeals also held that all members of the affected class are to have preference in filling future vacancies in line driver jobs at their home terminals ahead of laid-off line drivers transferring in from other terminals (A.P 42).

on which he could have qualified for the job had he been given the opportunity to establish his qualifications (A.P. 32, n. 34).

This refinement of the "qualification date principle" is necessary to cover situations such as existed at the Nashville terminal, where the district court found that the Company had provided training to whites, but not blacks, to enable them to become mechanics, partsmen and shop supervisors (A.P. 61).

SUMMARY OF ARGUMENT

A. Petitioner T.I.M.E.–D.C. challenges the concurrent factual determinations, reached by the court of appeals and the district court, that T.I.M.E.–D.C. engaged in a pattern and practice of discrimination in the hiring and transfer of its employees. However, the undisputed evidence indicates enormous statistical disparities, in the higher paying and more desirable line driver positions, between the employment of blacks and Spanish-surnamed persons, on the one hand, and non-minority individuals, on the other. For example, only one percent of the approximately 1,800 line driver jobs were held by these minority individuals in 1971, even though many of the company's terminals are located in areas with large minority populations. At the same time, large numbers of apparently qualified blacks and Spanish-surnamed persons were relegated to less desirable city operation and servicemen jobs. In the absence of any persuasive explanation for these flagrant statistical disparities, the courts below were entitled to draw an inference of discrimination, and shift to the defendant the burden of showing that a pattern and practice of discrimination had not occurred.

However, neither court below based its conclusion that a pattern and practice of discrimination existed on statistical evidence alone. The record was replete with testimonial evidence that qualified minority applicants who sought line driver jobs had their requests ignored, were given false and misleading information, or were not considered on the same basis as whites.

Petitioner T.I.M.E.–D.C. has failed to make the exceptional showing of error that alone would justify this Court's review of these findings based upon the entire record and unanimously concurred in by both courts below.

B. Both courts also correctly concluded that the pattern of racially segregated departments which was established by T.I.M.E.–D.C. is perpetuated by a departmental seniority system embodied in collective bargaining agreements negotiated by the International Brotherhood of Teamsters. Under this system a victim of discrimination who wishes to transfer to a line driver job must forfeit the seniority which he has accrued through service in the only company job that he was permitted to obtain. Because this loss of bidding rights and protection against layoff would threaten a transferring employee's economic survival, the seniority system acts as a substantial impediment to transfer. Even if he transfers, the minority individual is placed forever behind his white contemporaries with respect to the terms and conditions of his employment and the allocation of scarce employment benefits. Petitioner International Brotherhood of Teamsters nevertheless claims that because the seniority system was itself negotiated in good faith without racial intent and is a *bona fide* seniority system within the meaning of Section 703(h) of Title VII there is no violation of Title VII.

Title VII is directed at the consequences of employment procedures, and practices "neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of

prior discriminatory employment practices." *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 430. Section 703(h) of Title VII, 78 Stat. 257, 42 U.S.C. 2000e–2(h), was intended to protect the seniority system as a governing principle in labor management relations. Neither its terms nor its legislative history require its application to claims of incumbent minority employees who are locked into less desirable jobs by departmental seniority systems which perpetuate the effects of an original discriminatory assignment. Application to these individuals of earned company seniority in a rightful place job fits them properly into, rather than abrogates, the existing seniority system, and can hardly be said to threaten the vitality of seniority systems generally. Congress has endorsed the prevailing interpretation of the courts of appeals that Section 703(h) does not insulate applications of a seniority system which prevent victims of discrimination from using their earned company seniority when they transfer to their rightful place position.

C. Adequate relief for victims of racial discrimination in employment may require a remedy slotting the victims into the seniority positions that would have been theirs absent discrimination. *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747, 776–777. Identifying the individual victims of discrimination entitled to claim this seniority relief presents a difficult practical problem, the answer to which will turn on whether the claim and findings involve individual or class discrimination, the reasonable inferences that can be drawn from the factual record, and the nature of the unlawful practices followed by defendants.

In a case where a pattern and practice of discrimination has been demonstrated, this Court has already held that the burden shifts to the defendants to prove that members of the injured class were not victims. *Franks, supra,* 424 U.S. at 772. By contrast, the district court below placed the burden of proving that members of the class were victims on the members of the class themselves (or, here, the government suing on their behalf) and based the allocation of remedies on the strength of the efforts made on behalf of each of them. The court of appeals properly reversed, and reset the order and allocation of proof in a manner which anticipated *Franks*. Petitioners' argument that district court discretion should be sustained in the face of a failure to apply the proper legal principles regarding the allocation of the burden of proof is wrong under both *Franks* and *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405, 416.

D. The court of appeals also correctly held that, in the particular factual circumstances of this case, individuals seeking relief as victims of discrimination need not show that they had unsuccessfully applied for a vacant line driver position. The repetitious and continuing quality of a pattern and practice of discrimination has the practical effect of discouraging both initial and follow-up applications. Here the class of affected individuals are incumbents, and it is especially likely that they both knew of, and responded to, the pattern of segregated jobs; indeed there is evidence in the record here to that effect. To require minority employees to have applied for transfer to a segregated job in order to qualify for relief penalizes them for failing to perform what they knew to be a vain and

useless act. Moreover, the presence in this case of a seniority system with transfer penalties acted as an added deterrent to any application.

The court of appeals' remedy does not constitute a preference for all minority employees. The only members of the class entitled to seniority relief are those incumbent minority employees who were qualified when discrimination occurred and when vacancies were available, and whose present desire to transfer suggests that a similar opportunity to transfer in the past would have been accepted.

E. The court of appeals correctly held that the rights of members of the affected class to compete for future vacancies at their home terminals or elsewhere should not be subordinated to the rights of employees transferring from other terminals or to the rights of employees with less seniority who are on layoff. This temporary modification of applicable seniority rules with respect to victims of discrimination who opt to accept the class relief constitutes a limited and practical device to provide a reasonable expectation of obtaining a rightful place vacancy without undue delay. The court of appeals drew upon its frequent experience with discrimination remedies in the context of the trucking industry and correctly concluded that this temporary modification of seniority rules would, with fairness, increase the possibility that the effective relief which Title VII mandates would be achieved. Petitioners charge that non-minority employees may be adversely affected, but the impact is not severe and represents a reasonable application of the principle that "a sharing of the burden of the past discrimination is presumptively necessary." *Franks* v. *Bowman Transportation Co., supra,* 424 U.S. at 777.

ARGUMENT

I

THE DISTRICT COURT AND THE COURT OF APPEALS CORRECTLY FOUND, ON THE BASIS OF STATISTICAL EVIDENCE AND EXTENSIVE PRE-TRIAL AND TRIAL TESTIMONY CONCERNING INDIVIDUAL ACTS OF DISCRIMINATION, THAT T.I.M.E.–D.C. HAD ENGAGED IN A PATTERN OF DISCRIMINATORY EMPLOYMENT PRACTICES AGAINST BLACKS AND SPANISH-SURNAMED AMERICANS IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

A "seasoned and wise" rule of this Court is that, in the absence of an "exceptional showing of error," the concurrent factual findings of two lower courts will be considered final. *Comstock* v. *Group of Institutional Investors,* 335 U.S. 211, 214. The presence of statistical as well as testimonial evidence in the decision-making record hardly provides a reason to diverge from that prudential rule. The use of statistics in proving racial discrimination is long established in this Court (*Norris* v. *Alabama,* 294 U.S. 587), and frequent usage in the court of appeals [29] has demon-

[29] *Jones* v. *Lee Way Motor Freight, Inc.*, 431 F.2d 245 (C.A. 10), certiorari denied, 401 U.S. 954. See cases cited at A.P. 23, n. 27. The Company suggests that the Sixth Circuit has taken a different view of statistical evidence in *Senter* v. *General Motors Corp.*, 532 F.2d 511, 527 (Br., p. 14, n. 28). While the *Senter* court did state that the statistics there were "not conclusive," it also pointed out that the Sixth Circuit "generally acknowledge[s] the value of statistical evidence in establishing a prima facie case of discrimination under Title VII." 532 F.2d at 527.

strated their utility in Title VII litigation. Statistical evidence, indicative of a recurring quality in the acts charged, is especially pertinent in a pattern and practice suit in which the court must determine whether a company has regularly engaged in discriminatory acts.[30] By challenging the significance of statistical comparisons and the adequacy of the data base, in light of the alleged implications of various disqualifying factors (T.I.M.E.–D.C. Br., p. 14–25), T.I.M.E.–D.C.[31] seeks to involve this Court in the fact-finders' function of evaluating the adequacy of evidence and drawing appropriate and reasonable inferences. Moreover, the testimonial and statistical evidence here was tellingly probative, and indeed compelled the finding of a Title VII violation. These essentially factual conclusions unanimously reached by the judges below should not be disturbed.

The courts below correctly held that the largely undisputed statistical and anecdotal evidence established a *prima facie* case of discrimination. With one exception, no black was ever employed on a regular basis as a line driver by T.I.M.E.–D.C. or any of its predecessors until 1969.[32] As late as March 1971, almost

[30] The legislative history of Section 707 indicates that a "pattern or practice" suit is appropriate when a company has regularly engaged in prohibited acts. See, *e.g.*, 110 Cong. Rec. 14270 (1964) (remarks of Senator Humphrey). In *Washington* v. *Davis*, No. 74–1492, decided June 7, 1976, this Court described the rigorous standard of review that follows from an appropriate statistical showing in a Title VII case.

[31] Notably only petitioner T.I.M.E.–D.C. questions the sufficiency of the evidence.

[32] One black employed as a line driver at the Chicago terminal from 1950 to 1959 (A.P. 20).

three years after the original Nashville suit had been initiated, and five years after the effective date of Title VII, there were only 8 (0.4%) blacks and 5 (0.3%) Spanish-surnamed Americans working in the pool of 1,828 line drivers employed by T.I.M.E.–D.C. At the same time, the great majority of black (83%) and Spanish-surnamed American (78%) employees were assigned to city operation and serviceman jobs, while only 39 percent of other employees held jobs in those categories.[33] Indeed, in 1971, when less than one percent of the line driver jobs were filled by blacks and Spanish-surnamed Americans,[34] several terminals

[33] See pp. 8–9, *supra*. While the most pervasive discrimination found was in keeping blacks and Spanish-surnamed Americans out of line driver jobs, at some terminals they have also been excluded from less desirable jobs. The district court found, for example, that black employees at the Nashville terminal were denied training to become mechanics, partsmen, or shop supervisors (A.P. 61). See also p. 10, *supra*.

[34] T.I.M.E.–D.C. appears to attack the district court's finding (A.P. 59), affirmed by the court of appeals, that line driver, which pays as much as $1,300 to $5,500 more per year than city driver and does not involve loading and unloading trucks, is a more desirable job than city driver (T.I.M.E.–D.C. Br., p. 19). The record amply supports the court's finding (see A. 898, 339–340). While the Company introduced exhibits indicating that, in 1971, city drivers at two terminals averaged more pay than line drivers (Defs' Exs. MMM, PPP, A. 986, 987, 635–636), there is no such evidence respecting any other terminals. Moreover, the Company's exhibits also show that systemwide, in 1971, line drivers earned more than city drivers (line one of Defs' Exs. MMM, PPP, A. 986, 987). Further, Charles F. Hutchinson, T.I.M.E.–D.C.'s Personnel Manager, testified that studies done by the Company which compared the earnings of line drivers and city drivers for the years 1969 and 1970, in which the earnings of those drivers making less than $3,000 were excluded, disclosed no instances where line drivers earned less than city drivers (A. 626). In any event, the discrimi-

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located in areas with a large percentage of blacks in the population still had no black line drivers.[35] It is clear that blacks and Spanish-surnamed Americans were available, because they were employed by the company in less desirable jobs, including city driver jobs requiring qualifications similar to those of line drivers. In 1971, blacks and Spanish-surnamed Americans constituted 15% of the employees in city operation jobs for T.I.M.E.–D.C.[36] In these circumstances, the *prima facie* inference that the exclusion of qualified blacks and Spanish-surnamed Americans from more desirable jobs was a result of invidious discrimination is compelling. As Mr. Justice Frankfurter observed more than twenty years ago: "The mind of justice, not merely its eyes, would have to be blind to attribute such an occurrence to mere fortuity." *Avery* v. *Georgia,* 345 U.S. 559, 564 (concurring opinion).

Petitioner offered no explanation for the great statistical disparity in the employment of black and Spanish-surnamed Americans in line driver jobs and their employment in city driver and less desirable

natory exclusion of a protected class from any job category would violate Section 703(a)(2). See, *e.g., United States* v. *Hayes International Corp.*, 456 F.2d 112, 118 (C.A. 5).

[35] Compare line driver statistics for Atlanta, Dallas, Los Angeles, and Memphis terminals (A.P. 70–72) with population statistics for those areas (A.P. 68–69); see also A.P. 25, n. 29. According to 1970 Census data, blacks comprise 13.4% of all "truck drivers." U.S. Bureau of Census, Census of Population, 1970. Characteristics of Population, Vol. I, Part 1, P. 1–392, Table 91: "Occupation of Employed Persons by Race, for Urban and Rural Residence."

[36] See p. 9, *supra.*

jobs, other than the general statement that it hired the best qualified applicants (T.I.M.E.–D.C. Br., p. 21). *Cf. Norris* v. *Alabama, supra,* 294 U.S. at 598; *Hernandez* v. *Texas,* 347 U.S. 475, 480–481. There was no evidence that the exclusion of minority employees from line driver jobs was due to any valid job requirement;[37] the only significant requirement for a line driver position was experience driving tractor-trailer equipment,[38] experience which many of the city drivers either had when they applied for a job at T.I.M.E.–D.C. (A. 325–327, 370), or acquired as a result of city driving.[39] Even where it was asserted that there was a minimum driving requirement, that requirement was not applied uniformly, and there is evidence that it was waived for white applicants.[40] Both courts below suggested that unexplained statistical disparities of the magnitude present in this case (A.P. 18–22) can shift the burden of proof. On this point, the court of appeals specifically referred to its prior ruling in *Rowe* v. *General Motors Corp.,* 457 F. 2d 348, 358 (C.A. 5), that "figures of this kind while not necessarily satisfying the whole case, have critical, if not decisive, significance—certainly, at least in putting on

[37] Had such a requirement been asserted as the reason for disparate job assignment statistics, petitioner T.I.M.E.–D.C. would have been required to show that the requirement was supported by business necessity. *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 432. No such evidence was adduced.

[38] See, *e.g.*, deps. of Ned M. Rockwell, May 17, 1971, at 7–8; Kenneth N. Gibbs, Jr., pp. 27, 70–72; D. N. Champlin, pp. 15, 18, 64; Robert C. Cathey, pp. 22–23; and p. 8, *supra.*

[39] A. 325–327, 370–71.

[40] See, *e.g.*, deps. of Kenneth N. Gibbs, Jr., pp. 27, 70–72; Don Capshaw, pp. 294–295.

the employer the operational burden of demonstrating why, on acceptable reasons, the apparent disparity is not the real one" (A.P. 23). That statement is correct.

While the use of statistics to shift the evidentiary burden is most familiar to this Court in jury selection cases (see, *e.g., Norris* v. *Alabama, supra; Hernandez* v. *Texas,* 347 U.S. 475; *Turner* v. *Fouche,* 396 U.S. 346),[41] the burden-shifting inference is equally appropriate in a Title VII pattern of discrimination suit which similarly requires more than isolated rejections of qualified individuals. As in a jury selection case, statistical disparities of sufficient magnitude may show that a pattern exists and, in the absence of satisfactory explanation, compel the common sense conclusion that the disparities are not fortuitous.

The intensity of the statistical showing here vitiates petitioner's quibbles with the precision of the government's statistics. In the face of a showing that less than one percent of petitioner's 1,800 line driver positions were filled by minority employees, the courts below were entitled to reject the attempts of petitioner's witnesses to undermine the impact of the statistics. As the court of appeals stated, "the inability to rebut came not from lack of an informed standard. Rather, in most instances for LDs [line driver], the inability came from the inexorable zero" (A.P. 25).

Indeed, most of petitioner's statistical points are deficient on their face. For example, petitioner challenges the use of the S.M.S.A. as a basis of compari-

[41] The disproportions in the present case greatly exceed that found in *Turner, supra,* 396 U.S. at 359 (37% blacks on a grand jury as compared to 60% of the total population) to warrant corrective action by the courts.

son of minorities employed to minorities available in the community (T.I.M.E.-D.C. Br., p. 18); however, the order under review here provided class relief only for incumbent employees and relied principally on the statistical disparity between employment of incumbent whites and employment of incumbent blacks and Spanish-surnamed Americans in more desirable jobs (A.P. 18–22). Petitioner does not even address the evidence of statistical disparity in the concentration of these minority employees in the less desirable jobs. Similarly, petitioner cites statistics indicating hiring practice improvements in 1971 (T.I.M.E.-D.C. Br., p. 18), but the violations found occurred prior to 1971 and the relief afforded was limited to the pre-1971 period (A.P. 12, 29–30, n. 33). Moreover, petitioner's overall work force statistics do not indicate the jobs to which minority employees were assigned, a pivotal point in this litigation.

Thus, this is not a case where "fine tuning" of statistics to reflect those portions of the minority community suited by age and health to a job (T.I.M.E.-D.C. Br., pp. 19–20) would have any effect on the outcome. Where, as here, the job requirements were relatively minimal, the incumbent statistics egregious, and the testimonial evidence compelling, no useful purpose would be served by a requirement (involving substantial costs) to develop more precisely the statistics comparing minority hiring to minority availability in the area.[42] To prohibit the use, for *prima facie* pur-

[42] Petitioner attacks the use of Standard Metropolitan Statistical Area and Urban Place statistics (Br., p. 18 and n. 39). City statistics were also introduced (see A.P. 68–69). If the avail-

poses, of obviously helpful and reliable, available statistics because more sophisticated statistics could be created would be counterproductive to Title VII goals, without advancing the cause of judicious resolution of Title VII disputes.

The use of statistics by the courts below to draw simple, *prima facie* evidentiary inferences is not, as petitioner argues, an attempt to impose a racial balance standard for violations of Title VII; nor is it an attempt to force "preferential treatment" of minorities as a requirement of law in derogation of Section 703(j) (T.I.M.E.–D.C. Br., pp. 14–16). The evidentiary inferences that arise from the statistics are based, not upon failure to achieve racial balance, but rather upon "flagrant statistical deviations" (A.P. 23) from employment patterns which presumably would reflect an unbiased hiring process. Such evidentiary showings are clearly within the contemplation of the statute. Here, where the employer charged with discrimination has more than 6,000 employees located at 51 terminals in 26 states, and the class of alleged dis-

ability of prospective minority employees is to be determined by any other geographical standard, petitioner has not indicated what it might be.

Citing the testimony of one of its trial witnesses, a professor of psychology, T.I.M.E.–D.C. asserts that he demonstrated respondent's statistics to be unreliable to predict the availability of blacks and Spanish-surnamed Americans to join the workforce at the respective terminals (Br., pp. 19–20). Neither of the courts below found this witness's testimony adequate to undermine respondent's proof. Moreover, the witness acknowledged that the only information available respecting black and Spanish-surnamed American population was that utilized by the government (A. 564).

criminatees numbers more than 300, the use of statistics is essential in establishing a pattern and practice of discrimination. Far from reflecting a standard of racial preference which Section 703(j) prohibits, the use of these statistics is in an effort to determine whether the employer utilized legitimate and objective considerations in hiring in accordance with the Title VII standard."[43] That Section 703(j) is not intended to preclude such evidentiary showings is made clear in the legislative history of the 1972 Amendments to the Act, which indicates that Congress both knew and approved of court reliance on statistical evidence to draw inferences and, in appropriate cases, to shift the burden of proof."[44]

While the statistical evidence of gross disparities in the allocation of line driver jobs to minority and non-minority employees could alone have supported a

[43] See remarks of Senator Humphrey, 110 Cong. Rec. 12723 (1964) (A. 190); remarks of Congressman Celler, 110 Cong. Rec. 1518 (1964) (A. 189).

[44] Congress, in passing the 1972 Amendments to Title VII, was fully aware that the appellate courts were using severe statistical disparities as a basis for shifting the burden of proof. An amendment was introduced by Senator Ervin which would have amended Section 703(j) to bar use by any federal agency or federal court of quotas, goals or other numerical ratios. Senator Ervin argued that Section 703(j) was being misconstrued to permit use of numerical ratios. The floor managers of the bill, Senators Williams and Javits, cited and relied *inter alia* upon *United States* v. *Ironworkers Local 86*, 443 F.2d 544 (C.A. 9), and reprinted that opinion in full in the Congressional Record, 118 Cong. Rec. 1665, 1671–1675 (1972). That opinion contains a classic statement of the courts' reliance on statistical evidence to draw inferences and to shift the burden of proof, 443 F.2d at 551; 118 Cong. Rec. 1673, 1675 (1972). The Senate accepted the Williams/Javits position and voted to reject Senator Ervin's amendment by a vote of 22–44 (118 Cong. Rec. 1676 (1972).

prima facie case, the statistical showing was also matched by compelling testimonial evidence.[45] Numerous experienced and qualified black and Spanish-surnamed drivers who applied for line driver positions, or who asked to transfer to such positions, had their requests ignored, or otherwise were denied the opportunity, after being given false information.[46] Moreover, there was substantial evidence that the practice of denying those minorities such positions was motivated by considerations of race and national origin.[47]

While both courts below noted that statistics may establish a *prima facie* case, both went on to consider the testimonial evidence and *neither* based its conclu-

[45] Petitioner T.I.M.E.-D.C. also attacks the testimonial evidence as involving incidents "too isolated in number and in time to serve as a basis for a finding of a systemwide pattern or practice of discrimination" (Br., p. 20). Testimony was taken from approximately ten percent of the members of the class for whom relief was sought. As the court of appeals noted: "The [ten] terminals at which the Government took depositions are spread throughout the entire T.I.M.E.-D.C. system", and contain seven of the ten largest line driver operations, domiciling 1,171 line drivers (A.P. 26 and n. 30).

Petitioner's reference to the period of time over which the incidents occurred appears to be intended as an attack upon the relevance of discriminatory acts occurring prior to the effective date of Title VII. Evidence of such pre-Act discrimination is relevant in two ways. First, it is evidence that there was a long-standing practice which may have continued past the Act's effective date. Second, since part of respondent's case charges that the seniority system perpetuates the effects of past discrimination, evidence of pre-Act discrimination lays part of the ground work for that claim.

[46] See pp. 9–10, *supra*.

[47] See pp. 9–11, *supra*.

sion that a pattern of discrimination had been established on the statistics alone (A.P. 60–61, 23–24; compare T.I.M.E.-D.C. Br., pp. 14–25). Thus, the court of appeals observed (A.P. 26) that there was evidence of more than 40 specific instances of discrimination throughout the system of T.I.M.E.-D.C.—instances often egregious and viewed as a whole quite definitely supporting the finding that a pattern and practice of discrimination occurred.

This confirmed the district court's findings (A.P. 60–61) that:

> (a) Numerous qualified black and Spanish-surnamed American applicants who sought line driving jobs at the company over the years either had their requests ignored, were given false or misleading information about requirements, opportunities, and application procedures, or were not considered and hired on the same basis that whites were considered and hired.
>
> (b) Numerous qualified black and Spanish-surnamed American employees who have sought transfer to line driving jobs at the company have either been denied the opportunity to do so, or have not been permitted to transfer on the same basis as whites.

Because of the strong evidence of individual instances of discrimination,[48] the inferences that would ordi-

[48] Examples of race and national origin motivation include:

(a). R. D. Parker, a black city driver at the Memphis terminal. When Parker was first hired in 1949, he was told by the terminal manager that "he didn't have any colored road drivers" but that Parker could work in the city. In 1956, when white city drivers at the terminal were allowed to drive extra road runs and Parker also requested them, Parker was in-

narily arise from the statistical evidence gain added force. It was on the basis of "[a]ll of the evidence" (A.P. 61), including that presented by petitioners in attempted rebuttal, that both courts below concluded that petitioners had engaged in a pattern of discrimination against blacks and Spanish-surnamed Americans (A.P. 60–61).

Thus the issue petitioner attempts to raise (T.I.M.E.-D.C. Br., p. 14), whether, in the absence of testimonial evidence, statistics alone could be "dispositive", simply does not arise in this case. Rather this case presents the typical situation, where the court utilizes a combination of statistical and testimonial evidence to reach a reasoned conclusion regarding pattern and practice. Indeed, findings of discrimination against minorities in opportunities for line driver positions have been made and upheld based on similar testi-

formed by the terminal manager that the general office "was not going to let no colored drive the rigs up and down the highway." (Summary of dep. of R. D. Parker, pp. 1–2. in Pl's Ex. 240 (A. 277–278).)

(b). Feliberto Trujillo, a Spanish-surnamed American dockman (checker) at the Denver terminal. When Trujillo applied for a line driver job in 1967, he was told by a terminal personnel officer that he had one strike against him. Trujillo asked what that was and was informed: "You're a Chicano, and as far as we know, there isn't a Chicano driver in the system." (Dep. of Feliberto Trujillo, pp. 6–7.)

(c). Thomas W. White, a black city driver at the Los Angeles terminal. After White filed a complaint with the State of California in 1961 over his inability to get a line driver job at the Company, he was assigned exclusively to the task of unloading blocks of rubber, a heavy, dusty and dirty job, for an eight to ten month period, although it was normal practice for the dispatcher to rotate such undesirable assignments among all the city drivers (A. 333–335).

monial and statistical showings in numerous appellate and district court decisions concerning the trucking industry.[49]

The carefully based findings below are not deficient because the courts rejected in this context the standards of proof which may be typical in an individual action for discrimination. In *McDonnell Douglas Corporation* v. *Green,* 411 U.S. 792, this Court considered the "order and allocation of proof in a private, non-class action challenging employment discrimination" (411 U.S. at 800). The Court held that an individual claiming that his application for reemployment was rejected because of his race must show as part of his *prima facie* case not only that discrimination apparently occurred, but also that he was a victim of the alleged discrimination—including proof that a vacancy existed for which he was qualified and from which he was excluded.[50] Only then would the burden shift to the employer to show a legitimate non-discriminatory reason for the employee's rejection.[51]

[49] An extensive list of cases is collected in Teamsters Pet. 16, n. 26.

[50] The Court stated (411 U.S. at 802): "The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications."

[51] The Court, however, pointed out (411 U.S. at 802, n. 13): "The facts necessarily will vary in Title VII cases, and the specification above of the prima facie proof required from respondent is not necessarily applicable in every respect to differing factual situations."

As this Court held in *Franks* v. *Bowman Transportation Co., supra,* the order and allocation of proof are substantially different in a case alleging a pattern and practice of discrimination against a class of individuals. In a class action suit (or its counterpart in litigation by the government—a pattern and practice suit) the liability and remedy stages are typically split. The purpose of testimony at the liability stage is not to show that any particular individual would have obtained a specific job but for discrimination, but rather to support the inference of a pattern and practice of discrimination created by statistical evidence. Consequently, not all individuals discriminated against need testify at the liability stage. As the court of appeals stated, "[i]t would be contrary to a claim of this structure to have to offer testimony concerning every member of the affected class" (A.P. 34).[52] Since the issue of whether a particular individual has a valid claim to relief is left to determination during

[52] Petitioner T.I.M.E.-D.C. appears to argue that the failure to apply the *McDonnell-Douglas* standard deprived it of an opportunity to rebut the testimonial evidence (Br., p. 22–25). That contention is without foundation. Petitioner cross-examined respondents' witnesses and put on witnesses of its own. Despite this opportunity, the district court found that there were numerous instances of discrimination by the Company against blacks and Spanish-surnamed Americans.

The district court further held that a case of individual discrimination had been made out with respect to thirty of the witnesses and that, as a result, they were entitled to relief (A.P. 73–76). Those findings demonstrate the weight of the testimonial evidence. While the court of appeals ruled that such a determination was not necessary at the liability stage of a pattern and practice suit, it upheld the district court's findings (A.P. 33–34, 38).

the remedy stage, the pattern and practice finding cannot be challenged now on the basis that petitioner has not yet had the opportunity to demonstrate that individual class members were not victims of discrimination. In *Franks,* the district court had denied seniority relief because of a lack of evidence regarding vacancies and qualifications of individual class members and its "concern that some of the unnamed class members * * * may not in fact have been actual victims of racial discrimination." 424 U.S. at 772. This Court ruled that seniority relief should be afforded to the class and that evidence as to individual injury would become material to defendant's burden at the remedy stage when individual members sought to avail themselves of class relief. Thus the court of appeals here merely anticipated *Franks* in holding that "[w]hatever evidentiary hearings are required for individuals can well be postponed to the remedy" (A.P. 34).

Petitioners had the opportunity to introduce all their evidence as to the pattern and practice violation in the district court. They argued the significance of that evidence in that court and again in the court of appeals. Both courts found the evidence of a violation to be overwhelming. Finally, petitioners will have their opportunity in accordance with *Franks* to rebut the *prima facie* case as to individual claimants when class members seek their remedy. There is, accordingly, nothing in this case warranting this Court's reexamination of the concurrent findings of the two courts below.

II.

A SENIORITY SYSTEM THAT PENALIZES INCUMBENT EMPLOYEES WHO TRANSFER TO HIGHER PAYING, MORE ATTRACTIVE, TRADITIONALLY WHITE JOB CLASSIFICATIONS FROM WHICH THEY PREVIOUSLY WERE EXCLUDED PERPETUATES THE EFFECTS OF A PATTERN AND PRACTICE OF RACIAL DISCRIMINATION AND VIOLATES TITLE VII

A. A SENIORITY SYSTEM WHICH REQUIRES VICTIMS OF RACIAL DISCRIMINATION TO FORFEIT THEIR ACCRUED COMPETITIVE STATUS SENIORITY IN ORDER TO TRANSFER TO A JOB PREVIOUSLY SEGREGATED ON THE BASIS OF RACE, PERPETUATES THE EFFECTS OF PRIOR DISCRIMINATION

It is the policy and practice of T.I.M.E.–D.C., pursuant to its agreements with the Teamsters, that an employee who moves between jobs covered by separate collective bargaining agreements forfeits his seniority for all purposes except fringe benefits (A. 48, #15). The job of line driver, from which incumbent blacks and Spanish-surnamed Americans have been excluded, is covered by collective bargaining agreements separate from those which govern the less desirable jobs to which these minority employees were assigned. The Teamsters argue that the system evolved without racial intent (Br., pp. 19–33). Nevertheless, in order to claim a line driver opportunity that has been denied because of race, minority employees must be willing to forego the seniority that is already theirs because of service to the Company. Thus, the application of the challenged seniority system to classes of T.I.M.E.–D.C. employees previously discriminatorily

excluded from line driver jobs perpetuates the effects of past discrimination.

The practical penalties attached to transfer by this policy operate to perpetuate the exclusion of incumbent minority employees from the position of line driver by requiring them to give up earned bidding rights and protection against layoff. Preservation of seniority may be essential to an employee's economic survival; if employment decreases, he may find himself jobless. Thus, the loss of seniority becomes almost an absolute impediment to transfer. Even if he transfers, he will never catch up to the level of his contemporary who was not subject to discrimination. He is locked into a less desirable job, in terms of working conditions and pay, than that obtained by his nonminority counterpart, who was hired at the same time. The city or shop employee who transfers to a line driver position is treated as the junior-most person on the line driver list and placed forever behind his nonminority contemporaries or juniors in company service. For example, a black employee who was qualified to be a line driver in 1958, but because of discrimination was not given an opportunity to transfer to such a job until 1971, is placed in a competitive position junior to that of a white hired in 1970. Under the seniority system, he continues to suffer the effects of discrimination, even after transfer, by being denied credit for the seniority he acquired while working in the only job he was able to obtain. By conditioning present and future advancement in line driver jobs on the basis of a qualification—line driver seniority—which blacks and Spanish-surnamed Americans have

been precluded from obtaining, this aspect of the seniority system transforms past discrimination into present and future discrimination. As the Fifth Circuit noted in a case involving facts similar to those here:

> Every time a Negro worker hired under the old segregated system bids against a white worker in his job slot, the old racial classification reasserts itself, and the Negro suffers anew for his employer's previous bias. [*Local 189, United Papermakers* v. *United States,* 416 F.2d 980, 988, certiorari denied, 397 U.S. 919.]

By ensuring that the "compensation, terms, conditions, or privileges of employment" will continue to be distributed on the basis of a prior racial classification, application of the seniority system to incumbent employees who are the victims of prior discrimination violates the explicit language of Section 703(a)(1) of Title VII.

Both before and after *Griggs,* every court of appeals confronting the issue has held that a "job" or department seniority system is itself a violation of Title VII insofar as it applies to an affected class of incumbent minority employees who were assigned to less desirable positions at a time when race or national origin precluded their consideration for better paying traditionally white jobs.[53] Similarly, each of the appellate courts that has considered this issue has ruled that the

[53] See, *e.g., Local 189, United Papermakers* v. *United States,* 416 F.2d 980 (C.A. 5), certiorari denied, 397 U.S. 919; *United States* v. *Navajo Freight Lines, Inc.,* 525 F.2d 1318 (C.A. 9); *Bowe* v. *Colgate-Palmolive Co.,* 416 F.2d 711 (C.A. 7); *Robinson* v. *Lorillard Corp.,* 444 F.2d 791 (C.A. 4), certiorari dismissed, 404 U.S. 1006; *Head* v. *Timken Roller Bearing Co.,* 486 F.2d 870 (C.A. 6); *United States* v. *N.L. Industries, Inc.,* 479 F.2d 354 (C.A. 8).

seniority system in the trucking industry perpetuates traditional practices of excluding minorities from line (or road) driver positions and, therefore, is unlawful as applied to those minority employees assigned to non-line jobs during the period of discrimination. *Hairston* v. *McLean Trucking Co.,* 520 F.2d 226 (C.A. 4); *Sabala* v. *Western Gillette, Inc.,* 516 F.2d 1251 (C.A. 5), petitions for certiorari pending, Nos. 75–781, 75–788; *Thornton* v. *East Texas Motor Freight,* 497 F.2d 416 (C.A. 6); *United States* v. *Navajo Freight Lines, Inc.,* 525 F.2d 1318 (C.A. 9). The court of appeals below was correct in holding application of the seniority system to affected class members violative of Title VII once it found that "the minority employees were locked-in to the positions where they were initially discriminatorily assigned" (A.P. 24).

The Teamsters raise two "equitable" arguments challenging the finding that the seniority system that they negotiated violates Title VII. First they argue that since the Teamsters have no intent to discriminate, the fact that the seniority system perpetuates discrimination should not constitute a violation of the Act. However, as this Court stated in *Griggs* v. *Duke Power Co., supra,* 401 U.S. at 432, Congress directed the Act at the consequences of employment practices and "good intent * * * does not redeem employment procedures * * * that operate as 'built-in headwinds' for minority groups." Since the challenged application of the seniority system to which the union is a party continues the effects of past discrimination on members of the affected class and the union has

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taken no steps to correct the practice, they have intentionally engaged in an unlawful employment practice within the meaning of Title VII.[54]

The Teamsters' second argument is that there is no need for the courts to order any relief with respect to the seniority system, since the contract grievance procedure is theoretically available for victims of discrimination to use in obtaining their rights. However, as this Court made clear in *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, even where contract rights closely approximate statutory rights, a private collectively controlled grievance procedure cannot serve as a replacement for court enforcement of the individual rights that Congress has established in Title VII. *A fortiori,* here, where the collective agreement to be enforced in the grievance procedure is itself the source of the challenged discriminatory practice, that procedure could hardly serve as a substitute for the statutory remedy.

B. SECTION 703(h) DOES NOT SAFEGUARD APPLICATIONS OF A SENIORITY SYSTEM WHICH DISCRIMINATE BETWEEN INCUMBENT WORKERS ON THE BASIS OF PRIOR DISCRIMINATORY JOB CATEGORY ASSIGNMENTS

Section 703(h) of Title VII makes lawful differing conditions of employment "pursuant to a bona fide

[54] "Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices." *Griggs* v. *Duke Power Co.*, *supra*, 401 U.S. at 430; *Local 189, United Papermakers* v. *United States*, *supra*, 416 F.2d at 996–997; *Robinson* v. *Lorillard Corp.*, *supra*, 444 F.2d at 796; *United States* v. *Central Motor Lines, Inc.*, 338 F. Supp. 532, 559 (W.D. N.C.); *Cathey* v. *Johnson Motor Lines, Inc.*, 398 F. Supp. 1107, 1116 (W.D. N.C.).

seniority or merit system * * * provided that such differences are not the result of an intention to discriminate because of race * * *." Since the purpose of Title VII is to eliminate all discriminatory employment practices in whatever form which create inequity through the mechanism of employment discrimination (*Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 44), Section 703(h) must be properly limited to accomplish its purposes without frustrating the pervasive remedial goals of the statutory scheme. Last Term in *Franks* v. *Bowman Transportation Co., supra*, this Court refused to hold, in the absence of explicit language or a compelling legislative history, that Section 703(h) qualified or proscribed relief otherwise appropriate under the remedial provisions of Title VII, "once an illegal discriminatory practice occurring after the effective date of the Act is proved." 424 U.S. at 762. Instead, the Court held that Section 703(h) is fully consistent with the awarding of relief designed to restore victims of employment discrimination to their rightful place in the seniority system and, indeed, that under the Act "rightful-place seniority, implicating an employee's *future* earnings, job security, and advancement prospects, is absolutely essential to obtaining this congressionally mandated goal." 424 U.S. at 764–765 n. 21 (emphasis in original); see also 424 U.S. at 767–768 and n. 28. As that holding indicates, neither the language of the statute nor its legislative history requires, or even suggests, that Section 703(h) should be read as protecting those applications of a seniority scheme which maintain discriminatorily segregated categories of incumbent

employees and sustain conditions of employment which result solely and directly from intentional racial discrimination.

The cloudy legislative history of Section 703(h), which is set out in *Franks* and will not be fully repeated here, does little in itself to illuminate the precise range of the protection provided by it.[55] The purpose of the section, to the extent that it can be gleaned from the legislative history, was to protect the seniority system as a governing principle in labor-management relations and to preserve the seniority credit concepts of employee advancement from complete overhaul as a result of passage of Title VII.[56] A requirement of preferential treatment based upon a history of pre-Act discrimination, it was feared, would mandate the immediate hiring of minority persons and the awarding of preferences for blacks solely on account of their race.[57] In order to allay such fears,

[55] It should be recalled that most of the debate preceded the introduction of the substitute bill containing Section 703(h).

[56] While there were some general statements that seniority rights would not be affected, the discussions there were concerned with the situation in which an employer had excluded blacks altogether from its work force, and with protecting previously accrued layoff rights of "white workers who were hired earlier" against later hired blacks.

Thus, the Clark-Case Interpretive Memorandum stated "if a business has been discriminating in the past and as a result has an all-white working force", the employer "would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes", or "once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier." 110 Cong. Rec. 7213 (1964), quoted in full in *Franks* v. *Bowman Transportation Co.*, *supra*, 424 U.S. at 759, n. 15. See, also, n. 62, *infra*.

[57] See remarks of Senator Hill, 110 Cong. Rec. 468–488 (1964).

the Act's supporters pointed out that it would not require preferential treatment, such as the discharge of whites in favor of minorities or the award of fictional seniority to newly hired minority employees.[58]

As the holding in *Franks* suggests, nothing in this history indicates that Section 703(h) was intended to protect those applications of a seniority system which would perpetuate the effects on incumbent employees of prior discriminatory job assignments; and the courts have unanimously held that Section 703(h) does not do so.[59] The purpose expressed in the legislative history of protecting the seniority system as a governing principle is fully consistent with conferring their rightful place within a seniority system on incumbent minority employees who would otherwise be locked-in to less desirable jobs by an application of the seniority system which perpetuates the effects of an original discriminatory assignment.[60]

[58] It was in this context that they stated that it would operate prospectively and would protect existing seniority lists. See questions and answers to questions propounded by Senator Dirksen, quoted in *Franks*, *supra*, 424 U.S. at 760–761, n. 16; Note, *Title VII, Seniority Discrimination, and the Incumbent Negro*, 80 Harv. L. Rev. 1260, 1271 (1967).

[59] *United States* v. *Chesapeake* and *Ohio Ry. Co.*, 471 F.2d 582, 587–588 (C.A. 4); *United States* v. *Jacksonville Terminal Co.*, 451 F.2d 418, 453 (C.A. 5), certiorari denied, 406 U.S. 906; *United States* v. *Bethlehem Steel Corp.*, 446 F.2d 652, 661–662 (C.A. 2), *Local 189, United Papermakers* v. *United States*, *supra*, 416 F.2d at 987–988, 994–995; *Quarles* v. *Philip Morris, Inc.*, 279 F. Supp. 505, 515–517 (E.D. Va.).

[60] The discussion in the legislative history of Section 703(h) was not directed at segregated work forces or the effect of denying to blacks who had been excluded from consideration for the more desirable, higher paying jobs because of their race the right to use their accumulated seniority or any portion

Where seniority has been earned, albeit in a less desirable job category, application of that seniority (within the existing seniority system) in another, more desirable job category, for an individual qualified to fill the more desirable job, neither abrogates the existing seniority system nor threatens the continued vitality of seniority systems generally. Note, *supra,* 80 Harv. L. Rev. at 1271. See, *Local 189, United Papermakers* v. *United States, supra,* 416 F.2d at 995. Rather than making seniority illegal, Title VII enforcement merely means that earned seniority will be protected within the established seniority system when the victims of discrimination take their rightful place in job categories from which they previously were excluded.

Indeed, seniority systems which perpetuate categories of employment which were filled on a racially discriminatory basis fall within the express proviso to Section 703(h) excluding from that section's protection "differences" in conditions of employment that are "the result of an intention to discriminate because of race, color, religion, sex, or national origin * * *." Where the minority employee was hired into a system embodying discriminatorily segregated lines of progression, job categories, or departments and accrues years of seniority, the continued application of separate seniority systems to him is at the crux of his discrimination injury because it perpetuates the effects of

thereof as the basis for competing in those jobs. Note, *supra,* 80 Harv. L. Rev. at 1271; Gould, *Seniority and the Black Worker: Reflections on Quarles and Its Implications,* 47 Tex. L. Rev. 1039, 1042 (1969); Note, *Civil Rights—Racially Discriminatory Employment Practices Under Title VII,* 46 N.C.L. Rev. 891, 895 (1968).

the intentionally discriminatory job assignment pattern.

As to such employees, the separate conditions of employment caused by the seniority system are unprotected by Section 703(h) because they "are the result of an intention to discriminate because of race." [61] Indeed, it would be anomalous for Title VII to prohibit the exclusion of minorities from certain job categories and then insulate the seniority mechanism which implements and gives continuing effect to prior intentional discrimination involving precisely that exclusion.

Indeed, as the court below held, the rightful-place rationale subsequently adopted by this Court in *Franks,* although applied in that case only to providing a seniority remedy for employment discrimination which occurred after the effective date of Title VII, applies as well to the post-Act application of seniority mechanisms to deny to the victims of discrimination their full earned seniority (post-Act and pre-Act, from the time they were—or absent discrimination would have been—qualified for the job) in the job from which they previously were discriminatorily excluded.[62] In the present case, not only does

[61] "The act does not condone present differences that are the result of intention to discriminate before the effective date of the act, although such a provision could have been included in the act had Congress so intended." *Quarles* v. *Philip Morris, Inc.,* 279 F. Supp. 505, 518 (E.D. Va.). See Cooper and Sobol, *Seniority And Testing Under Fair Employment Laws: A General Approach To Objective Criteria Of Hiring And Promotion,* 82 Harv. L. Rev. 1598, 1613 (1969).

[62] Smilarly, the Interpretive Memorandum introduced into the Congressional Record by Senators Clark and Case in re-

the post-Act application of the seniority system to perpetuate discrimination, itself constitute the requisite statutory violation,[63] but, in addition, the pattern and practice of discriminatory refusal to transfer to be remedied here is a continuing violation which (with respect to some individuals) extends over both a pre-Act and post-Act period.[64]

Finally, as this Court recognized in *Franks* (424 U.S. at 764–765 n. 21), any doubt that Section 703(h) was not intended to protect particular applications of a seniority system of the sort involved in this case was resolved by the legislative history of the amendments to Title VII contained in the Equal Employment Opportunity Act of 1972. That legislative history is replete with references to the lower court cases holding that Section 703(h) did not protect such applications of seniority systems, including *Quarles* v. *Philip Morris, Inc., supra; Local 189, United Paperworkers* v. *United States, supra;* and *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (C.A. 7), *e.g.*, S. Rep. No. 92–

sponse to attacks on the bill's effect on employee hiring and seniority rights, noted that: "[W]here waiting lists for employment or training are, prior to the effective date of the title, maintained on a discriminatory basis, the use of such lists after the title takes effect may be held an unlawful subterfuge to accomplish discrimination" 110 Cong. Rec. 7213 (1964).

[63] The district court has not yet established the qualification date, if any, for each member of the affected class.

[64] *Local 189, United Papermakers* v. *United States supra*, 416 F. 2d at 995; *Quarles* v. *Philip Morris, Inc., supra*, 279 F. Supp. at 517; Note, *supra*, 80 Harv. L. Rev. at 1270.

415, 92d Cong., 1st Sess. 5, 8 (1971). Congress not only left the substantive provisions of Title VII unchanged, but specifically endorsed the interpretation which had prevailed in the courts:

> In any area where the new law does not address itself, or in any areas where a specific contrary intention is not indicated, it was assumed that the present case law as developed by the courts would continue to govern the applicability and construction of Title VII. [Section-By-Section Analysis of H.R. 1746, accompanying the Equal Employment Opportunity Act of 1972–Conference Report, 118 Cong. Rec. 7166 (1972)].

Congress' endorsement of court decisions treating applications of seniority systems which perpetuate the effects of prior discrimination on incumbent employees as subject to the prohibitions of Title VII illuminates the meaning of Section 703(h) and is entitled to substantial weight. See *National Labor Relations Board* v. *Bell Aerospace Co.*, 416 U.S. 267, 275; *Red Lion Broadcasting Co.* v. *Federal Communications Commission,* 395 U.S. 367, 380–381. Especially in light of this congressional reconfirmation of the broad purpose of Title VII to root out "practices that are fair in form, but discriminatory in operation" (*Griggs* v. *Duke Power Co., supra,* 401 U.S. at 431), there is no reason to interpret Section 703(h) so as to deny protection to a generation of incumbent minority workers, who have worked under a discriminatory system.[65]

[65] The seniority cases cited in the legislative history involved perpetuation of discriminatory exclusion from traditionally white jobs by the application of a racially neutral seniority system, rather than discrimination in initial hiring. See *Franks* v. *Bowman Transportation Co., supra*, 424 U.S. at 764–765 n. 21.

III

THE COURT OF APPEALS CORRECTLY RULED THAT IN A CASE WHERE A PATTERN AND PRACTICE OF DISCRIMINATION BEEN PROVED AN INCUMBENT MINORITY EMPLOYEE SEEKING RIGHTFUL PLACE SENIORITY RELIEF WHO IS A MEMBER OF THE AFFECTED CLASS (1) IS ENTITLED TO A REBUTTABLE PRESUMPTION THAT HE WAS A VICTIM OF DISCRIMINATION, AND (2) NEED NOT NECESSARILY HAVE UNSUCCESSFULLY APPLIED FOR A VACANT, RIGHTFUL PLACE JOB TO BE ENTITLED TO RELIEF

Petitioners do not appear to challenge the principle, established by this Court's decision in *Franks* v. *Bowman Transportation Co., supra,* that rightful-place relief for the victims of discrimination may involve full seniority transfer based on accrued company seniority. Nevertheless, they object to the court of appeals' decision on two grounds. First, they argue that the district court had discretion to award relief based upon the degree of injury demonstrated by evidence introduced in making the pattern and practice case (T.I.M.E.-D.C. Br., pp. 25–27; Teamsters Br., pp. 43–46). Second, they claim that by not applying the *McDonnell Douglas* standards for proof of injury, the court of appeals awarded preferential relief to all minority employees irrespective of injury, in effect creating a racial preference system (T.I.M.E.-D.C. Br., pp. 28–32; Teamsters Br., pp. 47–54). Petitioners are wrong on both counts.

There is no doubt that the fashioning of Title VII remedies ordinarily lies within the discretion of the district court. But that discretion must be governed by sound legal principles and when a district court's lim-

itations on remedy, if applied generally, would "frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination," the district court must be reversed. *Albemarle Paper Co.* v. *Moody, supra,* 422 U.S. at 421 (footnote omitted). As this Court reiterated in reversing a district court's remedial order in *Franks,* that discretion is vested, not for the purpose of limiting appellate review of trial courts, but "rather to allow the most complete achievement of the objectives of Title VII that is attainable under the facts and circumstances of the specific case" (424 U.S. at 770–771).

1. The court of appeals correctly rejected the district court's allocation of relief based upon evidence of "degree of injury" submitted during the liability stage of this pattern and practice case. That allocation was inconsistent with Title VII's proper enforcement in two ways. First, it would require the government in proving a pattern and practice case to introduce testimony as to every alleged victim of discrimination in order to make the required showing that individual injury occurred in every instance. That requirement would essentially destroy the class-action nature of a pattern and practice suit and transform it into a mere aggregation of individual claims as to which a pattern and practice finding would have little, or no, significance. As the court of appeals stated, "[i]t would be contrary to a claim of this structure to have to offer testimony concerning every member of the affected class" (A.P. 34). Such a requirement would place an enormous practical burden on the government, and

consume immense judicial time without warrant. "[I]t would defy reason and waste precious judicial resources for the Court either to require or permit individualized proof for every member of a class here numbering nearly 400 but frequently involving thousands" (A.P. 34).

The district court's limitation on relief based on proof of injury at the pattern and practice trial stage was improper for a second and at least equally important reason. The district court placed the burden of identifying who was a victim of discrimination on the wrong party, denying relief where members of the affected class could not provide "clear and convincing" evidence that they were victims of individual discrimination (A.P. 64–65). This is precisely contrary to this Court's subsequent specification in *Franks* of the proper allocation of proof in such a case. There this Court explicitly held that once a pattern and practice case has been made out in a case seeking class relief, the burden shifts to the defendants to prove that the members of the injured class were not victims: "But petitioners here have carried their burden of demonstrating the existence of a discriminatory hiring pattern and practice by the respondents and, therefore, the burden will be upon respondents to prove that individuals who reapply were not in fact victims of previous hiring discrimination" (424 U.S. at 772).[66] Absent such proof at the remedy stage, here,

[66] See, also, *United States* v. *Bethlehem Steel Corp.*, *supra*, 446 F.2d at 660; *United States* v. *Jacksonville Terminal Co.*, *supra*, 451 F.2d at 453; *United States* v. *Chesapeake and Ohio Ry. Co.*, *supra*, 471 F.2d at 593; *United States* v. *St. Louis-San Francisco Ry. Co.*, 464 F.2d 301, 310 (C.A. 8), certiorari denied, 409 U.S. 1116; *United States* v. *Central Motor Lines, Inc.*, *supra*, 338 F. Supp. at 560.

as in *Franks,* each member of the affected class is "presumptively entitled" to relief (*ibid.*).

Thus, as the court of appeals implicitly recognized, the restructuring of the case accomplished by awarding full class relief, once plaintiffs demonstrate a pattern and practice of discrimination, involves not simply the question of when proof will be introduced, but by whom the subsequent evidentiary burden will be carried. Contrary to petitioner's contention (T.I.M.E.–D.C. Br., p. 32), they must do more than simply return to the district court to retry the evidence; they must decide whether they possess evidence to rebut the presumption that each member of the affected class is a victim. Thus, the shifting of the evidentiary burden may either substantially limit, or eliminate altogether, the necessity for further proceedings. Only in those instances where petitioners believe they have that rebuttal evidence will an evidentiary hearing be required at the remedy stage.[67]

2. Assuming that the determination of who is to be a recipient of the full class relief is thus to be decided at the remedy stage in accordance with the *Franks* presumption, the petitioners urge that the rule established by the court of appeals will not properly identify the victims of discrimination. Petitioners

[67] The references to the court's opinion cited by petitioner T.I.M.E.–D.C. (Br., p. 25) to support its allegation that the court of appeals has foreclosed such proof relate only to the inappropriateness of introducing such evidence at the liability stage and of limiting seniority relief to those who have carried the burden of proving that they have suffered discrimination (A.P. 34, 39).

appear to believe that *McDonnell Douglas* and *Franks* established standards for identifying the victims of discrimination in all Title VII cases which, if abandoned, would allow every minority employee to obtain a "preference" regardless of actual injury.

In *McDonnell Douglas* a minority individual, who claimed that his job application was rejected for racial reasons, was required to prove that he applied, that he was qualified, and that other applicants were sought for the vacancy after he was rejected. The Court carefully noted that it was addressing the "issue * * * [of] the order and allocation of proof in a *private, non-class action* challenging employment discrimination" (411 U.S. at 800; emphasis added), and that even in that context this showing "is not necessarily applicable in every respect to differing factual situations" (411 U.S. at 802, n. 13). *Franks,* however, involved a finding of a pattern and practice of discrimination in a suit by class plaintiffs; and the Court in that context stated that, should *defendant* attempt to prove that a minority individual was not "in fact discriminatorily refused employment", evidence of a lack of vacancies or a lack of qualifications "would of course be relevant" (424 U.S. at 733, n. 32). Here the court of appeals held, in the presence of a pattern and practice finding, and a seniority system which perpetuates the discrimination, that incumbent employees could not be excluded from relief merely because they had not applied for a vacant job (which would have been, and generally have been perceived to be, discriminatorily unavailable to them

under the Company's practice), as long as they were qualified and have a present desire to transfer.

This Court has never established an immutable rule for identifying the victims of discrimination in a Title VII suit; nor should it. The propriety of various logical inferences and the necessity for various kinds of specific proof must necessarily depend on the type of proceeding (class or individual), the employment practice discriminatorily exercised (new employment or transfer) and the particular factual circumstances of each case. Cf. *McDonnell Douglas Corporation* v. *Green, supra,* 411 U.S. at 802, n. 13; *McDonald* v. *Santa F. Trail Transportation Co.,* No. 75–260, decided June 25, 1976, slip op. 5, n. 6. For example, requiring an actual application for a vacant position may in some factual situations be unreasonable and defeat the congressional mandate to provide a "whole remedy" to discrimination. Three factors combine to make the vacancy and application requirement unnecessary here: (1) the presence of a pattern and practice of discrimination over an extended period of time in which numerous vacancies normally would occur, (2) the fact that the class is limited to a specific category of incumbents, not all of whom necessarily will desire or qualify for a transfer when an appropriate vacancy occurs, and (3) the presence of a seniority system perpetuating the discriminatory pattern.

The application and vacancy requirements may often be inappropriate in a Title VII pattern and practice suit even though both requirements may be entirely necessary in an individual discrimination claim. In an individual claim, the inquiry as to in-

jury focuses on a particular point in time where the presence of an application and a vacancy from which the applicant was excluded is the typical indication of the fact of injury. By contrast, a pattern or practice suit is not fixed at any temporal point, but by its nature refers to regularized behavior over time. The repetitious and continuing quality of the pattern and practice has the practical effect of deterring both initial and follow-up applications which in turn makes it more unlikely to match an application with an opening.

The courts have recognized that a practice of systematically excluding minorities from consideration for certain categories of jobs inevitably deters those minorities from applying for those jobs even though they are desirous of obtaining them.[68] As the Fifth Circuit explained in *Bing* v. *Roadway Express, Inc.*, 485 F. 2d 441, 451:

> If an employee realizes full well that blacks simply are not hired as road drivers, why should he bother to apply? Certainly a few, such as Bing, have the courage to fight "the system", but it is equally certain that others

[68] *Bing* v. *Roadway Express, Inc.*, 485 F. 2d 441, 451 (C.A. 5); *United States* v. *N. L. Industries, Inc.*, 479 F. 2d 354, 369 (C.A. 8); *Jones* v. *Lee Way Motor Freight, Inc., supra*, 431 F.2d at 247; *Hairston* v. *McLean Trucking Co., supra*, 520 F. 2d at 231–232; *Equal Employment Opportunity Commission* v. *Detroit Edison Co.*, 515 F. 2d 301, 316 (C.A. 6), petitions for certiorari pending, Nos. 75–220, 75–221, 75–239, 75–393; *Rodriguez* v. *East Texas Motor Freight*, 505 F. 2d 40, 55 (C.A. 5), certiorari granted, May 24, 1976, Nos. 75–651, 75–715, 75–718; *Sagers* v. *Yellow Freight System, Inc.*, 529 F. 2d 721, 731 (C.A. 5); *United States* v. *Pilot Freight Carriers, Inc.*, 6 EPD ¶8766, p. 5344, 6 FEP Cases 280, 284 (M.D. N.C.); *Love* v. *Pullman Co.*, 11 EPD ¶10,858, p. 7621, 12 FEP Cases 332, 343 (D. Colo.).

> must have been intimidated and discouraged by Roadway's discriminatory practices.

To require that minority employees have applied for transfer in order to qualify for relief penalizes them for failing to perform what, as they knew and the proof demonstrates, would have been a vain and useless act.

The fact that the class of affected individuals is composed of incumbent minority employees makes it especially likely that they both knew of, and responded to, the pattern of segregated jobs; indeed there is evidence in the record to that effect.[69] The fact that the case is limited to incumbents has other obvious implications. Absent discrimination, it is reasonable to assume that vacant line driver jobs would have been offered first to this qualified pool of available, experienced individuals without any necessity that they apply; hence, they may properly be treated as constructive applicants for all job vacancies which became available after they were hired. The presence of a limited incumbent class eliminates the need for sifting out the affected class from the minority public at large, one of the functions that the application

[69] For example, John Batchelor, a black city operations employee at the Atlanta terminal, testified that he did not seek extra line driver runs even though he was interested in such work because he was aware that other black city operation employees had sought such runs and had been refused (summary of dep. of John Batchelor, p. 2 in Pl's Ex. 240 (A. 277–278)). Extra line driver runs at the Atlanta terminal led to regular line driver positions for white city operation employees, including employees with less seniority than Batchelor (summary of dep. of John Batchelor, *supra*, p. 2; Pl's Exs. 102, 104 (to Atlanta deps.); summary of dep. of Jackson B. Stroud, Operations Manager (Atlanta), pp. 4–5 in Pl's Ex. 240 (A. 277–278)).

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requirement normally performs. In a case like *Franks* where hiring discrimination is claimed by non-incumbents, applications by members of the excluded minority group serve to distinguish them from all other members of that group. Here there is no difficulty in identifying the members of the class subject to discrimination; they are incumbent employees employed by the company in less desirable jobs during the period of discrimination.

Finally, the presence of a seniority system reinforcing the discriminatory hiring practice is an additional factor making a vacancy and application requirement inappropriate here. Once the incumbents began to accrue time at the company, the seniority system acted as an added deterrent to any transfer application. Even when the pattern of discrimination had ceased, incumbent minority employees would be unlikely to apply for transfer to traditionally white jobs because they would forfeit all of their competitive status seniority and therefore their job security.[70]

The court's ruling does not establish an automatic racial preference for all minority employees. The class is pared down at the outset to incumbents rather than non-employed applicants, or potential applicants, from the community. To obtain the class relief, the incumbent must also have been qualified for a line

[70] *Sabala* v. *Western Gillette, Inc.*, *supra*, 516 F.2d at 1264; *Hairston* v. *McLean Trucking Co.*, *supra*, 520 F.2d at 231–232; *United States* v. *N. L. Industries, Inc.*, *supra*, 479 F.2d at 360.

driver job during the time the Company was discriminating in the employment of line drivers. In addition, he must presently be qualified and possess a present desire to transfer to his rightful place job (A.P. 95–96).[71]

Finally, the Company must have been unable to prove through relevant evidence, other than the lack of an application, that he was not, in fact, a victim of racial discrimination. Admittedly, the standard that the court of appeals found proper for this case does not provide the precision in the identification of a victim that may be required in an individual discrimination suit, but it is identification with a fair degree of specificity. More importantly, it may be the fairest approximation of fact of injury that can be obtained in the context of the pattern of discrimination demonstrated here. The contrary rule, requiring actual applications for vacancies, would permit the discriminating party to benefit from a pattern and practice so pervasive that it discouraged applications by qualified incumbents.

The burden required of affected minority individuals who seek the benefits of class relief should be judged in light of the limited practical impact on the Company and innocent non-minority employees should an enlarged number of incumbents achieve designation as victims of discrimination. The Company's back

[71] It is unlikely that an employee with a present desire to transfer would not have transferred to a line driver position in the past had he not been precluded by discrimination and by penalties imposed on transfer by the seniority system.

pay financial burden was set by the consent decree and will not be affected by the number of individuals obtaining relief (A.P. 91–92). The legitimate business interests of the Company will not be interfered with, since no individual will be permitted to transfer to a line driver position unless he is presently qualified under objective standards established by the consent decree (A.P. 96–97, 34–35). See *Franks, supra,* 424 U.S. at 772, n. 31. Nor will innocent non-minority employees suffer substantial injury. No non-minority employee loses any seniority which he has already gained; no non-minority employee is bumped from his job. They and minority employees who obtain relief will simply compete for future vacancies utilizing neutral seniority principles.[72]

While it may be true that not all members of the affected class would have bid for and obtained line driver jobs, it is also true that not all members of the affected class will wish to transfer or will be found qualified for such jobs even after modification of the seniority system. *United States* v. *Bethlehem Steel Corp., supra.* As this Court has recognized, it is not probable in instances of class-based relief that all members of the class will actually apply for and obtain relief. *Franks* v. *Bowman Transportation Co., supra,* 424 U.S. at 776, n. 36. Extensive experience with modifications of seniority systems strongly suggests that advancing age and other problems may cause many fewer members of the affected class to be able to transfer than would have been expected had such positions initially been available to all regardless of race and national origin.

[72] In this regard, the seniority carryover date for the minority transfers is designed to approximate the seniority the minority employees would have had absent discrimination; they will not be given any seniority for time worked at the Company prior to their (actual or constructive, if delayed by discrimination) obtaining of the requisite qualifications for line driver.

The absence of concrete indicators like applications for specified vacancies, of course, forces reliance upon inferences drawn from the full range of facts before the court. As a result, various courts have utilized diverse qualification date formulae in implementing rightful-place principles within the particular factual context that each faces (T.I.M.E.–D.C. Br., pp. 28–29). A violation of Title VII may itself be proven from evidence that implies, rather than explicitly demonstrates, the existence of unlawful discrimination. Once a pattern of discrimination against a class has been established, there is greater reason to permit reasonable inferences to be drawn from the evidence, in order to accord an effective remedy.

The court of appeals concluded from the facts of this case that it would be reasonable to infer that those incumbents who express a present desire to transfer would have chosen to do so when they became qualified, and would, absent discrimination, have obtained such a position when the next vacancy arose in that category. This is as sound a conclusion as the reasonable inferences recognized by this Court in constructing seniority relief in *Franks,* notwithstanding the dissenting observation that such an award was based upon the fiction that the discrimination victim had worked since he was denied employment, and upon the "assumption that nothing would have interrupted

his employment, and that his performance would have justified a progression up the seniority ladder." 424 U.S. at 792 (Mr. Justice Powell, dissenting); see also 424 U.S. at 767–768. Where, as in this case, adequate Title VII relief cannot be accorded without the fair use of inferences informed by the entire factual context, the court of appeals was correct in holding that injury should reasonably be inferred in the absence of an actual application for a vacancy.

IV

THE COURT OF APPEALS CORRECTLY HELD THAT THE RIGHTS OF MEMBERS OF THE AFFECTED CLASS TO COMPETE FOR FUTURE VACANCIES AT THEIR HOME TERMINALS OR ELSEWHERE SHOULD NOT BE SUBORDINATE EITHER TO THE RIGHTS OF EMPLOYEES TRANSFERRING FROM OTHER TERMINALS, OR TO THE RIGHTS OF EMPLOYEES WITH LESS SENIORITY WHO ARE ON LAYOFF

Petitioners challenge two additional rulings by the court of appeals applying rightful-place principles to this factual record, both of which concern the rights of members of the affected class to compete against line drivers (Teamsters Br., pp. 54–55; T.I.M.E.-D.C. Br., pp. 34–35). The first ruling establishes a preference for individual discriminatees awarded carryover seniority over employees from other terminals for the purpose of filling future vacancies at the discriminatee's home terminal (A.P. 42). The second directs that members of the affected class may compete against any line driver on layoff for a particular vacancy (other than a purely temporary vacancy) on the basis of carry-over seniority (A.P. 41). Both decisions

require temporary modification of collective bargaining agreements (A.P. 81, para. V, 99 #10) with respect to member of the affected class in an effort to make relief more effective in terms of what the court of appeals found to be "the practical realities and necessities inescapably involved in reconciling competing interests * * * ." *Franks* v. *Bowman Transportation Co., supra,* 424 U.S. at 777–778, n. 39.

The court of appeals provided a preference for members of the affected class seeking to bid on home terminal vacancies, as against drivers from other terminals, as the most appropriate way to approximate rightful-place relief without needless delay.[73] A home terminal preference simply permits members of the affected class a better chance to obtain a line driver position at their home terminals—the places where they would have been hired in the absence of discrimination. While this home terminal preference represents a modification of the Southern Conference

[73] At the Atlanta terminal, for example, approximately 22 line drivers, more than ⅓ of the 57-person line driver complement there as of January 1970, had transferred in from other terminals pursuant to the modified seniority system (summary of dep. of Jackson B. Stroud, Operations Manager (Atlanta), pp. 6–7, in Pl's Ex. 240 (A. 277–278); Pl's Ex. 99 (to Atlanta deps.) (line driver seniority roster)). Although no new line drivers had been hired "off the street" in Atlanta since 1966, a number of the line drivers who transferred in filled actual job openings (summary of dep. of Jackson B. Stroud, *supra*, pp. 4, 7–8). Thus, if members of the affected class at Atlanta were not given as part of their relief preference in filling future vacancies there ahead of line drivers transferring in from other terminals, it could well be many years before they would have an opportunity to fill a future vacancy at that terminal.

seniority system, it is, in fact, consistent with the general rules of bidding at home terminals.[74] Application of the Southern Conference rule might prevent discriminatees from ever exercising their seniority rights to obtain line driver jobs. While the home terminal preference relief implicates the interest of non-minority (and perhaps even of some minority) drivers who may wish to take advantage of what would otherwise be their Southern Conference transfer rights, it properly applies to the circumstances here, the principle that "a sharing of the burden of the past discrimination is presumptively necessary." *Franks* v. *Bowman Transportation Co., supra,* 424 U.S. at 777.

Similarly, application of rightful-place principles requires that laid-off non-minority employees with less seniority not be given priority over discriminatees with longer accrued seniority.[75] If a member of the

[74] While we recognize that affected class members in the Southern Conference, under the court's ruling (A.P. 43), may exercise carryover seniority rights at other terminals, that right is subordinated to the rights of class members already at those terminals, and is likely to have little practical effect. It does, however, provide some prospect for ultimate relief for individuals whose relief at their home terminals may be long delayed for lack of vacancies (possibly due to the previous transfer in of line drivers from other terminals under the Southern Conference rule).

[75] The court's decision to grant affected minority employees rightful-place seniority relief does not involve "bumping" of incumbent white line drivers. In accordance with applicable collective bargaining agreements, currently employed line drivers bid on regular runs and runs off the extra board at least once every 12 months (A. 825–826). Under this system permanent vacancies occur only when a road driver must be replaced or

affected class is senior to the laid-off non-minority employee, he should surely have a right to bid for the vacancy which absent discrimination he might previously have filled. To deny those bidding opportunities to members of the affected class in favor of their less senior white competitors on layoff would needlessly perpetuate past discrimination by limiting the number of job openings for which victims of discrimination may compete, thereby depriving them of the opportunity to reach their rightful place within a reasonable period.[76]

when an increase in operations creates a new position. A minority employee who obtains class relief will be able to bid for jobs only where a vacancy has occurred, and then he must compete with all other drivers on the basis of their seniority (A. 825). Moreover, minority class members will not be permitted to bid against drivers who have been only temporarily laid off. While the court of appeals has not specified the definition of temporary lay offs, that can properly be accomplished on remand. See *Freeman* v. *Motor Convoy, Inc.*, 409 F. Supp. 1100, 1126 (N.D. Ga.); *United States* v. *Florida East Coast Railway Co.*, 7 EPD ¶ 9218, p. 7067, 7 FEP Cases 540, 556 (M.D. Fla.).

[76] *United States* v. *Hayes International Corp.*, 456 F. 2d 112, 118 (C.A. 5); *United States* v. *Jacksonville Terminal Co., supra,* 451 F. 2d at 450–451; *Rowe* v. *General Motors Corp.*, 457 F. 2d 348, 358 (C.A. 5); *United States* v. *Chesapeake and Ohio Ry. Co., supra,* 471 F. 2d at 589. See also *Williamson* v. *Bethlehem Steel Corp.*, 468 F. 2d 1201, 1205 (C.A. 2), certiorari denied, 411 U.S. 931.

There is, in sum, no reason to modify the court of appeals' careful determination as to the "'special blend of what is necessary, what is fair, and what is workable,'" in this case. *Franks* v. *Bowman Transportation Co., supra,* 424 U.S. at 778, n. 39."

[77] The Teamsters do not pursue one of the questions it presented in its petition for a writ of certiorari, *i.e.*, whether it was proper to award seniority relief in the absence of the Teamsters locals which formally signed the collective bargaining contracts with the Company, contending that it is premature at this time (Teamsters Br. 3, n. 3.) The record (see pp. 11–13, *supra*) and the case law amply support the determination of both courts below that the Teamsters International was a proper party to represent and defend the seniority status of its members and that the locals were not indispensable parties. *United States* v. *Navajo Freight Lines, Inc., supra,* 525 F.2d at 1321–1322; *Sagers* v. *Yellow Freight System, Inc., supra,* 529 F.2d at 737–738; *United States* v. *Pilot Freight Carriers, Inc.,* 54 F.R.D. 519, 521–522 (M.D. N.C.); *United States* v. *East Texas Motor Freight System, Inc., supra,* 10 EPD ¶10,345, p. 5416, 10 FEP Cases 973, appeal pending, No. 75–3332 (C.A. 5); *Johnson* v. *Ryder Truck Lines, Inc.,* 10 EPD ¶10,535, pp. 6240–6241, 12 FEP Cases 895, 903 (W.D. N.C.); *United States* v. *Terminal Transport Co.,* 11 EPD ¶10,704, pp. 6936–6937 (N.D. Ga.); *Cathey* v. *Johnson Motor Lines, Inc., supra,* 398 F. Supp. at 1116; *Freeman* v. *Motor Convoy, Inc., supra,* 409 F. Supp. at 1108–1112; *United States* v. *Lee Way Motor Freight, Inc.,* 7 EPD ¶9066, pp. 6497–6498, 7 FEP Cases 710, 747 (W.D. Okl.). See also *United States* v. *Roadway Express, Inc.,* 457 F.2d 854, 857 (C.A. 6).

CONCLUSION

For the foregoing reasons the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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IN THE

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OCTOBER TERM, 1976

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(Consolidated)

No. 76-636
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, *Petitioner*
v.
UNITED STATES OF AMERICA, *Respondent*

No. 75-672
T.I.M.E.-D.C., INC., *Petitioner*
v.
UNITED STATES OF AMERICA, *Respondent*

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF FOR PETITIONER INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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---

REPLY BRIEF FOR PETITIONER INTERNATIONAL BROTHERHOOD OF TEAMSTERS

This case presents questions as to : (1) whether a seniority system is *bona fide*—and thus lawful under Title VII § 703(h), (see our original brief, pp. 36 to

43); and (2) what is the appropriate remedy in Title VII cases in which an employer is shown to have discriminated in hire and job placement [1] (see our original brief at pp. 43 to 56).

The Government contends that two unlawful employment practices have been committed in this case: first, a pattern and practice of discrimination by the employer against blacks and SSA in hiring for OTR jobs; and, second, application of a seniority system negotiated by the employer and union that perpetuates the effects of past discrimination in hiring. It is our position that under *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747, the first, if proved, states the employer's violation of § 703 against the class of "identifiable applicants who were denied employment because of race

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[1] We assume in this brief that such employer discrimination has been established.

Actually, it has not. For statistics as to disparate incumbency in 1971 are inapposite to the question as to the hiring patterns from 1965 to 1971. See Petition For Certiorari in 75-636 at § 3, pp. 24ff. and Amicus brief in 75-6712 filed by the Equal Employment Advisory Council.

Unions representing T-DC workers had no reason to be on notice of unlawful hiring practices after July 1965, the effective date of the Act. For from '65 to '71 there were less employees—but more minorities—and there is no statistic in this record by which it can be ascertained that blacks or SSA's were denied and whites preferred employment during that period.

To the contrary, the record affirmatively shows that during this period T-DC was merging freight carriers, acquiring operating rights and going concerns, including incumbent employees. See Opinion of Court of Appeals at note 6; 517 F.2d 299 at 304.

So there was little or no road hiring during this period other than the acquisition of going concerns. Unions, aware of the merging trends and consequent *layoffs*, were not on notice of any claim of unlawful *hiring* practices during this time.

after the effective date of Title VII" (*Id.* at 750),[2] but that the second claim does not state a valid Title VII cause of action.

The Government's late-filed brief substantially shifts its grounds, and does not attempt to defend all that was held by the Court of Appeals. In this reply we first give attention to and answer that which the Government now says, then address in the light of the Government's brief that which the Court of Appeals held.

THE LAW TO BE APPLIED *

1.

The Government argues (Brief, pp. 40ff) that "a seniority system which requires victims of racial discrimination to forfeit their accrued competitive status seniority in order to transfer to a job previously segregated on the basis of race, perpetuates the effects of prior discrimination."

The fact is that the seniority system here applied [3] does *not* require forfeiture of seniority which, absent the employer's racial discrimination, any victim would have enjoyed. To the contrary, this seniority system is structured to assure any or all identified victims of

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[2] Cf. 424 U.S. 747 at 757-8. The beneficiaries of the *Franks'* decree were not merely "identifiable", they were identified, i.e.

> "The black applicants for OTR positions comprising class 3 are limited to those whose applications were put in evidence at the trial."

[3] See our original brief 24-33.

* This subject is more fully developed and discussed in the Brief *Amicus* of AFL-CIO in #76-333, *United Air Lines, Inc.* v. *Evans*, in which certiorari has been granted.

the employer's racial discrimination of their "rightful place". See our original brief at pp. 42 ff.[4]

To be sure, as this Court recognized in *Franks,* where any seniority system applies, if the employer discriminates in hire (or assignment or discharge), a potential consequence is that the hiring discriminatees will be adversely affected in that they "will perpetually remain subordinate to persons who, but for the illegal discrimination, would have been in respect to entitlement to (the) benefits (allocated according to seniority) his inferiors." (*Id.* at 768). But, since this adverse effect is the direct product of the hiring system and is therefore confined to the individuals that the particular employer has actually discriminated against in hire (as opposed to minority persons generally whom that employer has not discriminated against and who are therefore in their "rightful place in the hierarchy of seniority" (*Id.*)), the Court also recognized that the "underlying legal wrong affecting them is *not* the alleged operation of a racially discriminatory seniority system." (*Id.* at 758; emphasis added).

Section 706(g), the Act's remedy provision, in turn, "empower(s)" the federal courts upon finding such a § 703 violation to "mak(e) whole insofar as possible the victims of (the unlawful) discrimination". *Id.* at 764. *Franks* also concludes that "... a seniority remedy slotting the victim in that position in the seniority system that would have been his (but for the discrimination) ... will be necessary to achieve the 'make whole' purposes of the Act." (*Id.* at 765-766). Thus § 703(a)(1)'s

[4] Cf. Brief for Southern Conference of Teamsters in #75-715, to be argued this day, *Southern Conference of Teamsters* v. *Rodriquez,* at pp. 27, ff.

prohibition against the employer's discrimination in hire and assignment, and § 706(g)'s grant to the courts of the authority to fashion 'make whole' remedies, provide complete assurance that post-Act victims of racial discrimination will "obtain (their) rightful place in the hierarchy of seniority according to which ... employment benefits are distributed." (*Id.* at 768). It is therefore plain that as to those victims of the employer's racial discrimination, the Act's purpose, "to prohibit all practices in whatever form which create inequality in employment opportunity due to discrimination on the basis of race, religion, sex or national origin" (*Id.* at 763), is fully served, so long as the Government had the opportunity to prove that the employer's hiring and job allocation system was discriminatory. Effectuation of that purpose does not require demonstration also that application of the seniority system is an additional § 703 violation. The latter is surplusage, adding nothing to the remedy, and serving only to complicate the trial of the case against the employer, and to confuse the law.

2.

The Government next argues that Title VII, in § 703(h), "does not safeguard (from a § 703 charge) applications of a seniority system which discriminates between incumbent workers on the basis of prior discriminatory job category assignments."

The "discrimination" here is against 2600 "local" or "city" employees, over 2000 of whom are white, and less than 400 of whom are black or SSAs. Again, this differentiation is, as we have shown in our main brief at pp. 19ff, based on the economics of the industry and not on race. The differentiation is thus not discrimination

within the meaning of § 703(c) which defines the only unlawful labor organization practices.

Moreover, the seniority system at bar falls within the protection of § 703(h) in which the Congress has specified:

> "(h) notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority * * * system * * * provided that such differences are not the result of an intention to discriminate because of race, color * * * or national origin."

The Government's reading of Title VII's legislative history (Brief, p. 45 ff) proceeds on a misunderstanding of the legislative process and the basic holding in *Franks* which was concerned with the proper interpretation of "the remedial provisions of Title VII, specifically § 706(g)." (*Id.* at 762.) And, the 1972 EEO Act did amend § 706(g). (See *Id.* at 763-765 at n.21.) In *Franks,* this Court therefore canvassed the legislative history of this clearly relevant 1972 amendment to the provision before it. (See also, *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405, 414, n.8, 420-421, which, like *Franks,* turned on § 706 and for that reason discussed the 1972 amendments.)

But the question to which the court below addressed itself was not only one of remedy but of what acts are to be deemed discriminatory and hence unlawful employment practices. The 1972 amendments throw no light on this § 703 question.

The 1972 EEO Act revised the enforcement mechanism of Title VII and covered certain employers previously excluded from the reach of that Title. Only one narrow, and entirely non-controversial amendment to § 703, completely removed from the problem presented here, passed the Congress in 1972.[5] Indeed, so far as we are aware, no legislative proposal touched on the application of seniority systems otherwise lawful where the "effect is to perpetuate the disadvantages accruing from prior discrimination". Accordingly, the Committee Reports and the floor debate are barren of meaningful discussion relevant to the proper resolution of this case. Since Congress's attention was directed elsewhere, the 1972 legislative history does not provide guidance to the courts in determining what conduct constitutes an unfair employment practice. Certainly, nothing in the 1972 EEO Act, or its legislative history, can be considered a legislative ratification of any lower court decisions interpreting § 703.[6]

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[5] That amendment was described as follows in the Section By Section Analysis of H.R. 1746, 118 Cong. Rec. 7166 (1972):

> SECTIONS 8(a) and (b)
>
> These subsections would amend sections 703(a) and 703(c)(2) of the present statute to make it clear that discrimination against applicants for employment and applicants for membership in labor organizations is an unlawful employment practice. This subsection is merely declaratory of present laws as contained in the decisions in *Phillips* v. *Martin-Marietta Corp.*, 400 U.S. 542 (1971); *U.S.* v. *Sheet Metal Workers International Assn., Local 36,* 416 F.2d 123 (8th Cir. 1969); *Asbestos Workers, Local 53* v. *Vogler,* 407 F.2d 1047 (5th Cir 1969).

[6] The Government's suggestion, Brief p. 51, that the 1972 Legislative History is pertinent to interpretation of § 703 of the 1964 legislation is met at p. 16, note 13, *infra.*

Here it is sufficient to note that the materials specified by the Government related to bills which were rejected. And the Conference Committee Bill, passed as amended, made no reference either by its terms, or in its legislative history, to seniority questions.

The doctrine that "perpetuation" of the employer's discrimination is itself unlawful, is fundamentally unsound because Congress did not intend to protect the rights of pre-Act discriminatees against the seniority advantages which whites (or other non-discriminatees) obtained before the Act; instead, when the issue was raised in the debates, Congress deliberately chose to preserve existing seniority rights, as an essential part of the compromise which made enactment of the bill possible.

Title VII was authoritatively explained as having prospective effect only;[7] and it was amended in the course of its passage by the addition of § 703(h) expressly to protect existing seniority rights, as detailed in the *Franks* opinion, 424 U.S. at 759-761. (Cf. our original brief at 50-53.)

But the Government says, Brief, p. 47 at n. 59, that a seniority system which "perpetuate(s) the effects on incumbent employees of prior discriminatory job assignments * * *" is not protected by § 703(h). It relies on *Quarles* v. *Phillip Morris, Inc.*, 279 F. Supp. 505, 515-517, and cases which, in turn, cite it.

Quarles holds "a department seniority system *that has its genesis in racial discrimination* is not a *bona fide* seniority system," 279 F. Supp. at 517, emphasis added.

We have shown that our seniority system did *not* have its genesis in racial discrimination (original

[7] Ordinarily a statute operates only prospectively," ". . . a retrospective operation will not be given to a statute which interferes with antecedent rights . . . unless such be 'the unequivocal and inflexible impact of the terms, and the manifest intention of *the legislation.*'" *Greene* v. *U.S.*, 376 U.S. 144, 160.

Brief, pp. 19 ff); and the Government has not challenged the fact that our system in *bona fide*.

So *Quarles*, or other cases rooted in segregated unions, and segregated facilities, with blacks limited to the yard gang, while whites were assigned on the "line of progression" escalator, have no application to the instant case.

If the *Quarles* line of cases be otherwise interpreted to outlaw *bona fide* seniority systems which "perpetuate" the employer's racial discrimination, it runs afoul of the legislative history of the 1964 Act. For the Congress was precise that no cause of action was provided to pre-Title VII discriminatees to attack a seniority system on the ground that the system fails to remedy the effects of pre-Act discrimination.

Title VII, far from providing for retrospective effect, was authoritatively explained as having prospective effect only; and it was amended, in the course of passage, by the addition of § 703(h) to expressly protect existing seniority rights. This Congressional action, detailed in the *Franks* opinion (424 U.S. at 759-761) is, even absent the presumption of nonretroactivity, dispositive against the *Quarles-Papermakers* line of decisions—as we next show.

As this Court observed in *Franks*:

> The initial bill reported by the House Judiciary Committee as H.R. 7152 and passed by the full House on February 10, 1964, did not contain § 703 (h). Neither the House bill nor the majority Judiciary Committee Report even mentioned the problem of seniority. That subject thereafter surfaced during the debate of the bill in the Senate. This debate prompted Senators Clark and Case to

respond to criticism that Title VII would destroy existing seniority systems by placing an interpretive memorandum in the Congressional Record. 424 U.S. at 759 footnotes omitted.

The full text of the memorandum pertaining to seniority status is set out at note 15 of the *Franks* opinion, 424 U.S. at 759.

At the same time, Senator Clark placed in the Congressional Record a Justice Department statement assuring that under Title VII "any differences in treatment based on established seniority rights would not be forbidden by the Title." This is set out in *Franks* at note 16, 424 U.S. at 760.[8]

Senator Clark also introduced into the Congressional Record a set of answers to a series of questions propounded by Senator Dirksen, two of which are pertinent to the issue of seniority and appear at note 16 of the *Franks* opinion, at p. 761.

These assurances that the bill "is not retroactive," that "Title VII would have no effect on seniority rights existing at the time it takes effect" and that the bill "will *not* require employers to change existing seniority lists" could not have been plainer or more unqualified. Yet so great was the concern that existing seniority rights be preserved and protected, and so essential was the cooperation and approval of Sen. Dirksen, the min-

[8] 110 Cong. Rec. 7207 (1964) quoted in *Franks*, 424 U.S. at 760, n. 16. The memorandum had been prepared by the Department "in rebuttal to the argument made by the Senator from Alabama (Mr. Hill) to the effect that Title VII would undermine the vested rights of seniority * * * and that Title VII would impose the requirement of racial balance" (110 Cong. Rec. 7213). Senator Hill was then the Chairman of the Committee on Labor and Public Welfare.

ority leader, if the filibuster was to be broken and a civil rights bill enacted, that steps were taken to make assurance "double sure." That was the function of § 703(h).

3.

The Government's attempt at distinction between the effect of the seniority system upon rejected minority applicants on the one hand, and incumbent minority city employees on the other, (Brief at 48-50) is without practical or logical basis. The applicant for a road job who was turned down for that job and offered a city job is not worse off than the road applicant who was denied any job at all. On the contrary, he is better off, because he was given a choice between taking a city job or looking elsewhere, a choice not open to the applicant who was turned down completely. And if the situation of the two applicants is compared only with respect to seniority, the minority applicant who took a city job is better off than the applicant who received no employment at all and who therefore obtained no seniority benefits with this employer.[9]

Moreover, even if the equities of past discriminatees were greater where they have been hired into a city job rather than into none at all, or the legitimacy of the expectations of the white incumbents in the two situations could somehow be differentiated, the courts would still

[9] Similarly, it matters not to an employee whose expectations are defeated whether he is suddenly made junior to an individual who has been working in a different department, or one who has been working for a different employer. In either situation the job security which he has built up over the years is undermined by the operation of the Act. And this, of course, is the precise result against which Sen. Hill had warned, but which the proponents of Title VII unequivocally disavowed.

not be free to write that distinction into law. For, the legislative record is clear that Congress drew no such lines, adopted no such sophisticated distinctions, but unqualifiedly and unequivocally determined that the Act would be wholly prospective in its operation and that existing seniority rights would be preserved.

4.

The Government asserts (Brief, p. 52), "the Court of Appeals correctly ruled that in a case where a pattern and practice of discrimination (has) been proved an incumbent minority employee seeking rightful place seniority relief who is a member of the affected class (1) is entitled to a rebuttable presumption that he was a victim of discrimination, and (2) need not necessarily have unsuccessfully applied for a vacant, rightful place job to be entitled to relief."

As we have shown, the only unlawful act is the employer's, in denying "road" assignment to "x" number of blacks and SSAs.[10] It will not do to *assume* (as does the Court of Appeals, P.A. 34.) that all 400 minorities opted for a road job; any more than we can assume that over two thousand "city" whites did so. So "x" remains unknown.

The "affected class" as asserted by the Government throughout its brief, and defined by the Court of Appeals is "x" plus "y", i.e., *all* minority employees. This is a contrived and unrealistic figure. Until the actual "affected class" is defined and identified, the problems which the Government speaks to at Brief 52ff. are not yet here for decision.

[10] Blacks who did not seek road employment; or who were not qualified for road employment, or who opted for road employment when none was available—are in no different position than whites who did not seek road employment, or who were not qualified for such work, or who were denied it because there was no vacancy. We may not *assume* that all blacks were adversely affected any more than whites were. A showing that no blacks were on the road does not show that any identifiable black was denied road employment.

When they are, the NLRB experience, which we detail at 20ff., *infra,* should be followed.

Having responded to the Government's assertions as to its version of what the Court of Appeals meant, we now return to the basic issues tendered by our Petition for Certiorari, first addressing the practical operation of the seniority system, then commenting upon the appropriate remedy due the actual victims of the employer's discrimination.

THE SENIORITY SYSTEM

1.

The Government does not contest *bona fides* of the seniority system. Instead the Government insists that regardless of the *bona fides* of the system, if it operates to impede movement of victims of the employer's racial discrimination from a status quo it is *per se* unlawful.

The very purpose of any seniority system is to preserve incumbents' jobs.[11] The protection of an incumbent necessarily means a degree of deterrence of those who would displace incumbents. Surely Congress un-

[11] Cf. Millis & Montgomery, *Organized Labor,* McGraw-Hill Book Co., Inc., N.Y. 1945, pp. 455ff; Aaron, "Reflections on the Legal Nature and Enforceability of Seniority Rights," 75 Harv. L. R. 1532, 1535 (1962).

As this Court held in *Humphrey* v. *Moore,* 375 U.S. 355 at 346, 347; "Seniority has become of overriding importance and one of its major functions is to determine who gets or who keeps an available job."

derstood this when it validated *bona fide* seniority systems.

The seniority system here does, indeed, operate to deter (but not to block) all *local* employees, white or black, from movement. The more than two thousand whites, and almost 400 blacks and SSAs, enjoy seniority protection in their local employment. Those with the most seniority have (by reason of the seniority benefits provided through collective bargaining) the pick of the local runs, and this is true whether white or black or brown. Doubtless the greater their local seniority the more they will ponder a move to another classification where competitive seniority begins anew. The 20-year city man will be less likely to move city to road than the 2-year city man. But this deterrence is not based on race; it applies to all, whatever color.

Similarly, in an industrial seniority situation where the employee of a Chicago manufacturer wishes to move to a plant in the "Sun-belt" where he believes his chances for ultimate advancement are superior, he is less likely to move if he must abandon 20 years of seniority in Chicago and begin anew in Los Angeles, Phoenix or Atlanta.

But this deterrence does not make the Los Angeles, Phoenix or Atlanta industrial seniority patterns unlawful. For if there are lawful seniority listings, and consequent lawful seniority expectations of incumbent Sun-belt employees, these remain *bona fide* and lawful even though minority employees (even those of the same employer) opt to move in from the North.

The deterrence of movement is not occasioned by race or color—it is a function of any seniority system

that movement from status quo to some different relationship is inhibited by *any* seniority system.[12]

2.

Griggs, 401 U.S. 428, does not help the Government in this case. To hold that an employer's testing procedure which was not related to actual job content, or to job performance, and which was "used" to discriminate against blacks was discriminatory, (as this Court did in *Griggs*) was to follow the Congressional mandate of § 703(h) of the Act which authorized the use of "any professionally developed ability test" that is not "designed, intended, or *used* to discriminate because of race . . ." 401 U.S. at 433, emphasis this Court's. The test in *Griggs* was, indeed, *used* to disqualify blacks.

The Congress was more protective of seniority practices than it was of the employer's testing practices. Seniority systems were validated, if *bona fide*, "provided that such differences are not the result of an *intention* to discriminate because of race, color, religion, sex or national origin * * *" § 703(h) first 15 lines (emphasis added).

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[12] The Government brief ignores the fact that for 40 years NLRB has been deciding which is the appropriate unit for Collective bargaining. (See our original brief at p. 29ff.) And craft and departmental units have as often been designated as have plant-wide or industrial units. Seniority listings within such units, or, as here, within separate road and city units which NLRB has designated are surely *bona fide*. (See *Georgia Highway Express*, p. 29 of our main brief.)

The Second Circuit has recently held that there is "no sufficient basis for distinguishing between facially neutral departmental and plant-wide seniority systems," in determining the effect of § 703 (h) as an exception to liability under the Act. *Acha* v. *Beame*, — F.2d — (C.A. 2, 1976); 12 F.E.P. Cases 257 at 262.

Literally then, application of a *bona fide* seniority system is not in itself unlawful unless "the result of an intention to discriminate because of race or color * * *". The *bona fide* seniority system now before this Court is not the result of such intention. (See our original brief at pp. 19-33.)

3.

The Government's limited reference to the legislative history of Title VII,[13] asserts that the "broad purpose of Title VII justifies the decision of the Court of

[13] The single reference (at Govt. Brief, pp. 50-51) to S.Rep. No. 92-415, 92nd Cong., 1st Sess. 5, 8 (1971) is inapposite here. The reference at page 8 is to "employment practices and policies which discriminate on the basis of sex, and have accordingly, set the necessary legal precedents for dealing with *this form of discrimination.*" (Emphasis added).

The reference at page 5 acknowledges that the 1964 Act was passed in reliance on conciliation intended to mellow those whose ill-will resulted in isolated and distinguishable discriminatory events. It then lists in a footnote "the subsequent literature on the subject which "*generally describe the problem* in terms of "systems" and "effects." (emphasis added).

General description of the problem can hardly be transformed into what the Government now claims as "Specifically endorsed the interpretation which had prevailed in the courts" (Gov't. Brief, p. 51). Such "endorsement" could not be derived from Committee reference to "general description" in a bill S. 2215 which was not enacted. The 1972 legislation was of H.R. 1746, as amended in the Senate and later explained in Conference Report of March 2, 1972.

The bill which was enacted was accompanied by a "Conference Report" as H.R. 1746 (3/2/72). Neither it, nor the House Report on H.R. 1746 (June 2, 1971) so much as mentions seniority. The Section by Section Analysis was not before this Committee. The assumption in the Section By Section Analysis ("it was assumed") that lower court decisions as of that time would govern the interpretation of Title VII "(i)n any area where the new law does not address itself" is just that—*an assumption.* It does not purport to be, and cannot be, a wholesale enactment of these lower court

Appeals—otherwise we "... deny protection to a generation of incumbent minority workers who have worked under a discriminatory system." (Brief, p. 51). Not so.

The foundationstone of the Government's argument is that "incumbent minority workers" are so thoroughly and well protected by the existing seniority provisions that they are loath to risk the loss of them by taking chances in other employment. (Cf. Court of Appeals opinion at P.A. 31-32.)

As a practical matter, the certain way to "deny protection to a generation of incumbent minority workers" is to abolish—or so weaken as to make ineffective —the seniority system which means job security.[14]

decisions—whatever they may have held, regardless of their reasoning and mutual consistency or inconsistency—into positive law. Nor, consistent with accepted principles of statutory interpretation, can this statement in the Section By Section Analysis be given weight in interpreting Title VII as enacted by the 1964 Congress. Even at best, "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." (*United States* v. *Price*, 361 U.S. 304, 313.) And here, the entire legislative history and the very breadth of the statement negate the possibility that the 1972 Congress in amending certain sections of Title VII focused on what was intended by the 1964 Civil Rights Act with respect to "area(s) where the new law does not address itself * * *," or studied the whole corpus of lower court decisions interpreting Title VII in those areas.

[14] And courts are regularly doing just that, e.g., in *Sagers* v. *Yellow Freight*, 529 F.2d 721 there is injunction against even presenting a seniority claim involving a member of the affected class to the established grievance body. And the Government is presently urging the Fifth Circuit in *U.S.* v. *ETMF*, (pending before the Fifth Circuit as No. 75-3332) "... to vacate the provision in the decree which refers challenges to seniority dates to Teamster grievance committees." Brief of the United States and the Equal Employment Opportunity Commission as Plaintiffs-Appellants to the Fifth Circuit, filed December 3, 1975 at p. 52.

4.

The Solicitor General in his "Memorandum for the United States as Amicus Curiae" in #75-182, *EEOC* v. *Jersey Central Power & Light Co.,* advised this Court that (despite the EEOC view to the contrary) "... layoffs of employees in the reverse order of their seniority if made pursuant to the terms of an otherwise *bona fide* companywide seniority system, do not discriminate against any individual ... because of such individual's race (42 U.S.C. 2000e-2(a)) ..."

And in the present brief (at p. 48) the Government asserts:

> Rather than making seniority illegal, Title VII enforcement merely means that earned seniority will be protected within the established seniority system when the victims of discrimination take their rightful place in job categories from which they previously were excluded.[15]

"City" or "local" employees, regardless of race or color, have "earned seniority" only within their city or local classifications. That "earned seniority" is fully protected by the system which the Government here attacks.

Moreover, and dispositive of the Government's claim, is the fact that the collective bargaining agreements provide contract machinery by which "any individual" who is the victim of seniority discrimination is to be made whole both in back wages and seniority allo-

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[15] We agree—but find this hard to square with the Government's assertion two pages later (at p. 50) that: "... the post-Act application of the seniority system to perpetuate discrimination, itself constitutes the requisite statutory violation."

cation (see our original brief at pp. 42-43). And as the union has redundantly stated (long before this Court's *Franks* opinion) any individual denied road employment because of race should be awarded the road seniority he would have enjoyed absent the employer's refusal to grant him road employment. See our original brief at p. 30ff.; 43.

The assumption repeatedly stated by the Government and the foundation of its entire case against the union, that the seniority system "locks in" the minorities, thus is unsupportable. For any victim of racial discrimination has a contract remedy to attain rightful place—and if he chooses the courthouse, rather than the grievance procedure to attain that rightful place, that, too, is available. The "lock in" theory just has no application here, for there is no proof of specific acts of discrimination against specific individuals who are claimed to have been locked in.

Again the Solicitor General's amicus brief in *Jersey Central* becomes pertinent. He there advised this Court (Memorandum, p. 3):

> But the Act does not require giving black (or other minority-group) employees enhanced seniority rights on the basis of their race simply because other black applicants were previously denied employment on the basis of their race. Treating black employees *differently for purposes of layoffs solely because they are black, when they have not themselves previously suffered individual discrimination by the employer, would amount to preferential treatment on the basis of race* within the meaning of Section 703(j) of the Act, 42 U.S.C. 2000e-2(j). (Emphasis added.)

5.

Forty years of NLRB precedent in ascertaining who has been the victim of discrimination in regard to hire or tenure of employment in violation of § 8(a)(3) of the Labor Act,[16] has been ignored by the Court of Appeals and in the Government's brief here. *Franks* stresses that:

> As we made clear in Albemarle Paper in utilizing NLRA as the remedial model for Title VII, references must be made to actual operation and experience as it has evolved in administering the Act .... If victims of racial discrimination are under Title VII to be treated differently and awarded less protection, than victims of unfair labor practice discrimination under the National Labor Relations Act some persuasive justification should appear. That no justification exists doubtless explains the position of every union participant in the proceedings before the Court in the instant case arguing for the conclusion we have reached. 424 U.S. at 774-775.

Just as the Fifth Circuit in *Franks* gave "less protection than victims of unfair labor practice discrimination under the National Labor Relations Act would have received," and provided this "less protection" without "persuasive justification" '; so in the instant case the Fifth Circuit has awarded more protection than the victims of unfair labor practice discrimination under the National Labor Relations Act would have received, and again no persuasive justification appears.

Significantly, not a single NLRB case is even mentioned in the Government's brief. The experience of the agency which enforces the statute banning employ-

[16] 29 U.S.C. § 158(a)(3).

ment discrimination which was the model upon which Title VII was constructed is totally ignored.[17]

REMEDY

1.

As this Court has said in both *Albemarle* and *Franks* the Labor Act is the "model" upon which Title VII was constructed. NLRB "makes whole" the victims of employment discrimination by requiring their placement in the positions they would have occupied but for the employment discrimination. This requires NLRB to focus upon individual workers—and to evaluate the pertinent facts regarding each claimant to ascertain whether the employer's discrimination has adversely affected him.

It is not sufficient merely to determine that an employer is wont to discriminate; or even that the employer has engaged in gross violation of the § 8(a)(1) proscription against interference, restraint or coercion contained in the Labor Act. Such findings will justify "cease and desist" injunction, but not reinstatement, back pay or award of seniority rights.[18]

Only when it is demonstrated that as a result of employment discrimination identified individuals have lost wages and seniority standing may these be pro-

[17] Nor has the Circuit Court here, or in other Title VII cases made any use of its Labor Act experience. NLRA is in one pigeonhole, and Title VII in a separate file.

[18] See *NLRB* v. *Dan River Mills*, 274 F.2d 381. (CA 5, 1960); *NLRB* v. *Fox Mfg. Co.*, 238 F.2d 211 (CA 5, 1956); *NLRB* v. *Newton Co.*, 236 F.2d 438 (CA 5, 1956); *NLRB* v. *McGahey*, 233 F.2d 406 (CA 5, 1956); *NLRB* v. *Coates & Clark, Inc.*, 231 F.2d 567 (CA 5, 1956); *NLRB* v. *Mason & Hanger, etc.*, 449 F.2d 425 (CA 8, 1970).

vided[19] For the NLRB's power (like those provided in Title VII) are remedial, not punitive—and the Board is powerless to do more than restore that which would have been attained absent discrimination. NLRB's remedial powers are limited to "making whole" those who as "a consequence of the unfair labor practices found by the Board" have actually been deprived of statutory rights.[20]

Cf. 2 Legis. History of NLRA at p. 2332 quoting Senator Wagner in floor debate in reference to § 1) of the Labor Act: ". . . the Board will be empowered to issue orders forbidding violation of the law and making restitution *to those who have been injured thereby.*" (Emphasis added).

The NLRB's attempts to compensate *all,* when only a few were adversely affected, was halted here. See *United Brotherhood of Carpenters, etc., supra,* 365 U.S. 651[21] where this Court held, there must be "sup-

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[19] Cf. Morris, The Developing Labor Law, B.N.A. for ABA Section of Labor Relations Law, 1971, at 115ff.

[20] Op. Cit. at pp. 841ff. Cf. *Consolidated Edison* v. *NLRB,* 305 U.S. 236; *NLRB* v. *United Mineworkers District 50,* 355 U.S. 453, 2 L.Ed.2d 401; *Local 60 United Brotherhood of Carpenters* v. *NLRB,* 365 U.S. 651, 6 L.Ed.2d 1; See IV Jenkins, *Labor Law,* p. 181ff., §§ 22.3-22.4 and cases there cited.

[21] Cf. *Morrison-Knudson* v. *NLRB,* 278 F.2d 63 (C.A. 9, 1961); *Morrison-Knudson* v. *NLRB,* 275 F.2d 914 (C.A. 2, 1961). In the *Morrison-Knudson* cases, NLRB, upon a finding that a union contract violated § 8(b) of the Labor statute, granted a general reimbursement of dues to all employees covered by the unlawful agreement. But the proof was that only five were adversely affected by the unlawful contract. The Ninth Circuit held the awards to those who were not adversely affected was "punitive," not "remedial" and set it aside, 278 F.2d 63. Similarly, the Second Circuit set aside the NLRB's "windfall" award to those not shown to have been adversely affected by the unfair labor practice, 275 F.2d 914 at 918. This Court in *United Brotherhood of Carpenters, supra,* made a similar holding.

port in the evidence" that individual beneficiaries of an NLRB Order were adversely affected in violation of the Labor Act. *Carpenters,* 365 U.S. at 656.

Without regard to this authority, the Government in the Court of Appeals in the instant case asserted that proof of the employer's pattern of discrimination in hire, obviates the necessity of proof that individuals suffered thereby, and permits awards of money and seniority to each individual in the "class" without regard to proof of discrimination or damage. Thus the Government asserted: "The introduction of testimony as to the extent individuals seeking relief were damaged by discrimination would be unduly burdensome on the parties and wasteful of the Court's time."[22] The Court of Appeals agreed that "it would defy reason and waste precious resources for the Court either to require or permit individualized proof . . .,"[23] yet specified that the entire "affected class" was to have augmented seniority.[24]

The Government *now* asserts (Brief, p. 53ff.) that this was proper for two reasons—one: that identification of victims, and ascertainment whether seniority or pay was lost, should await the "remedy" stage;[25] and two: that the District Court misapplies burden of proof.

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[22] Government Brief to Court of Appeals at p. 44.

[23] P.A. 34, 517 F.2d 319.

[24] P.A. 35, 517 F.2d at 319. ". . . all members of the affected class rather than just a selected few."

[25] This obviously did not occur to the government until it prepared its brief on the merits in this Court. Back pay was distributed to "each alleged individual and class discriminatee" P.A. 92. And the relief sought was fully specified and litigated. Cf. App. 195ff. and App. 728.

A.

Bifurcated Trial

Liability and remedy were fully litigated in the District Court. No litigant has asserted otherwise. The notion of separate liability and remedy trials originated in the opinion of the Court of Appeals, which did not have the benefit of the parties' views as to the propriety of separate trials in this case. Ordinarily, the bifurcation of Title VII cases into separate "liability" and "remedy" stages can only increase the burden on court and litigants.[26] Here the Government after lengthy nationwide discovery, and inspection of every existing TIME-DC personnel paper made its best proof of both "liability" and "remedy".[27] A judgment was entered which disposed of the entire case.

It will not do to require re-trial of remedy now—on the bare suggestion of the Court of Appeals that "some . . . *may have* suffered discrimination even more egregious than those whom the government singled out . . ." P.A. 34, 517 F2d 299 at 319, (Emphasis added.). The Government does not yet identify any who so "may have suffered." Indeed, there is not even identification of which incumbents "express a present desire to transfer."[28]

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[25] While District Courts should have discretion to do so in appropriate cases, "involving thousands" (517 F.2d 299 at 319), the parties are entitled to advance notice that the trial is in stages. No notice was given here. And the Government has yet to indicate that any individual other than those considered by the District Court even claims to be the victim of racial discrimination.

[27] P.A. 94-116; Amended P.A. 117-124.

[28] The government asserts at Brief 63 that it is "reasonable to infer that those incumbents who express a present desire to transfer would have chosen to do so when they became qualified, and would, absent discrimination, have obtained such a position when the next vacancy arose in that category."

This assertedly "sound conclusion" presupposes that all the almost four hundred blacks and SSA's would have transferred to the road—but that none of the more than 2,000 whites would have done so.

B.

Burden of Proof

Yet the Government insists that the burden of proof is on the union to demonstrate which of the almost four hundred minority incumbents were *not* the victims of discrimination. This is justified, the Government says (Brief, p. 53), because "to introduce testimony as to every alleged victim of discrimination in order to make the required showing that individual injury occurred. . ." would be "an enormous practical burden on the government. . ."

How much more of a burden on a union to speculate who might have opted for what job, when, and in what circumstances? And then to require the union to meet the burden of producing testimony regarding each such speculation as to each vacancy,[29] if any, would be to turn the trial upside down and backwards.

If enforcement of Title VII is to follow the Labor Act "model" which this Court has said it must, then the burden of proof of individual discrimination is on those who seek the finding that they are the victims of discrimination.

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[29] Parenthetically, the union is in no better position to produce testimony as to vacancies than is the government. Records as to vacancies, and who filled them are maintained by the employer, who has sole responsibility for hire and job placement. And FBI has photographed every extant personnel paper. It took two years for this government investigation. Surely, in these circumstances the government is better able to bear the burden of proof.

The burden of proof in litigation of allegations of discrimination in regard to hire of tenure of employment in violation of § 8(a)(3) of the Labor Act "is always on the (NLRB) General Counsel and never shifts—."[30] In Labor Act cases the Fifth Circuit has redundantly so held.[31]

The Government's insistence that *Franks* v. *Bowman* holds to the contrary is in error. In *Franks* it was given that an identified group of actual applicants had been denied employment because of their race.[32]

The problem there was one of proper remedy. Here, at most, it is given only that the employer has engaged in a pattern of discrimination. The problem is to identify those who were the victims of discrimination.

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[30] II Jenkins, *Labor Law* (Anderson Co., Cincinnati, 1969) at § 7.59 and cases there cited. Accord: 3 Kheel, *Labor Law* (Matthew Bender, N.Y., 1973) at § 12.03(8), § entitled "Burden of Proof," and cases there cited.

[31] *NLRB* v. *McGahey*, 233 F.2d 406; *NLRB* v. *Sutphin Atlanta, etc.*, 373 F.2d 890; *NLRB* v. *Neuhoff Packers*, 398 F.2d 640 at 647; *NLRB* v. *Bogart Sportswear*, 485 F.2d 1203 at 1208. "The burden is on the General Counsel to prove, and not on the employer to disprove that the discharges were discriminatory."

Cf. *NLRB* v. *Great Dane Trailers, Inc.*, 388 U.S. 26, 18 L.Ed.2d 1027 (1967) which places upon the respondent employer the burden of going ahead with the evidence, after it is first shown that employment has been denied—with the burden of proof remaining with the General Counsel. See Kheel, *supra*, Vol. 3 at p. 12-227. Cf. *NLRB* v. *Fibers Intl. Corp.*, 439 F.2d 1311 (C.A. 1, 1971) and the many cases there cited.

[32] See — U.S. —, 47 L.Ed.2d at 458: "The black applicants for OTR positions composing class 3 are limited to those whose applications were put in evidence at the trial." This Court then noted (Fn. 10) that ". . . only post-Act victims of racial discrimination are members of class 3"—all between the periods 1970 to January 1, 1972.

The burden of proof to identify them—and to make *prima facie* showing that specified individuals have suffered racial discrimination is on plaintiff. Otherwise the Labor Act models are jettisoned.[33]

Whether individual, class, or pattern or practice—the inquiries and burdens of proof in Title VII cases should follow the Labor Act model. Those who demonstrate they have been denied [34] employment because of racial discrimination should be made whole—compensated by the party who denied the employment, and given "rightful place" seniority. But it does not make sense to provide more (or less) relief for the same

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[33] Once this burden has been met, there may come burdens upon defendants to explain or justify; e.g. if A proves he wished to transfer to a road job at a particular time—and was refused the opportunity, justification for such refusal should be the burden of the party alleged to have so refused. This was just what occurred with respect to the fifty or so individual claims presented to the district court (of which thirty-four were found to have merit)—and is consistent with the *McDonnell-Douglas* procedure specified by this Court, 411 U.S. 792.

Cf. *U.S.* v. *Leeway Motor Freight*, W.D. Okla., CCH Emp. Prac. Guide at § 5284.

[34] Ordinarily proof of "denial" would require proof that the claimant made some type of claim.

We acknowledge that where it is proved that application would be futile, no application should be required; but "futility" of application should not be assumed, without proof. Cf. *Thornton* v. *ETMF*, 497 F.2d 416 (C.A. 6, 1974).

Note that the Department of Transportation Regulations, App. 841-894, *require* written applications for road positions. App. 846-894 at 844-5.

See § 391.21 "Application for employment: (a) except as provided in subpart G of this part, a person shall not drive a motor vehicle unless he has completed and furnished the motor carrier that employs him with an application for employment that meets the requirements of paragraph (b) of this section." Motor Carrier Safety Regulation, § 391.21(a); App. 846.

substantive violation, depending only on whether the form of action is individual, class, or pattern. Whatever the form of action, the only purpose is to "make whole" and enjoin recurrence of racial discrimination.

THE GOVERNMENT'S SHIFT IN POSITION

We have seen that the Court of Appeals specified a remedy permitting *all* members of the affected class, rather than just a selected few, to be permitted to exercise their full seniority (P.A. 34; 517 F.2d 299 at 319).

Despite the Circuit Court's clear insistence on wholesale carryover of qualification date seniority for the entire class, the Government's brief (p. 39), asserts that "petitioners will have their opportunity in accordance with *Franks* to rebut the prima facie case as to individual claimants when class members seek their remedy."

That is exactly what the Court of Appeals held could *not* be done. Indeed, the Government in its Opposition to Certiorari herein, at pp. 15-17, argues the correctness of the full carryover seniority determination of the Court of Appeals, and insists "the Courts need not engage in exhaustive case by case analysis of the treatment of each minority employee", and "it would defy reason and waste precious judicial resources for the court either to require or permit individualized proof for every member of the class . . . "

So all effective means of obtaining determination of individual "rightful place" are foreclosed, and the "remedy hearing" becomes illusory if, as the Government insists, the law of the case has been established, and the decision of the Court of Appeals stands that the class, *qua* class, is to have full carryover seniority.

With respect, we suggest that the Government's representations in its brief to this Court that "petitioners will have their opportunity to rebut the prima facie case as to individual claimants when class members seek their remedy" is flatly contrary to everything the Government has argued to this point, and is contrary to the holding in the Court of Appeals in this case, as well as in *Rodriguez*. See 505 F.2d 40 at 63ff.

In short, the Government takes three positions which seem to us wholly inconsistent: (1) that all incumbent minorities are entitled to full carryover seniority as held by the Court of Appeals, (2) that "petitioners will have their opportunity in accordance with *Franks* to rebut the prima facie cases as to individual claimants when class members seek their remedy";[35] and (3) that petitioners "opportunity" will be limited by the fact that all minority claimants have full seniority and the analytical steps by which seniority is to be determined (in *McDonnel-Douglas, supra,* p. 30) are not applicable in this case.

Rather, we say, the Court of Appeals should be reversed and the District Court affirmed.[36]

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[35] Cf. Government Brief, p. 24.

[36] Except that the District Court's "Order Amending, etc." (P.A. 117-118) which provides discriminatory preference in order of transfer (but not seniority) has the effect of blocking all whites' transfers until all blacks are first transferred. See our Original Brief at page 14, note 23, and P.A. 65 as amended by P.A. 117. This should be corrected on remand. The former position (P.A. 65) is unobjectionable. The latter discriminates against whites and prefers blacks who have not been adversely affected by any law violations.

THE DENIAL OF PROTECTION TO LAID-OFF EMPLOYEES

The pertinent collective bargaining agreements recognize the economic facts of life in the motor carrier industry, including the fact that employment fluctuates with the public's demands for service. Accordingly, protections for incumbent employees against lay-off and assurances of recall for incumbent drivers are sought by the union in collective bargaining, and have resulted in the employee protections in Article 4, § 1 of the collective bargaining agreement, viz; App. 804:

> " . . . Seniority shall only be broken by discharge, voluntary quit, more than a three year lay-off or . . . as provided in any applicable provision of the Supplemental Agreements . . . "[37]

The road agreements in the South further provide that laid-off road drivers at a particular terminal may exercise seniority to bump-in to another road terminal displacing any road drivers there with less seniority. (App. 49)[38]

These conventional collectively-bargained protections of incumbents were not adopted for any discriminatory purpose. The Court of Appeals acknowledges, P.A. 41, 517 F.2d at 322:

> We recognize that the Union contract provision granting laid-off LD's a three-year period in which they may move into vacancies at their home terminal without competition was not adopted for discriminatory purposes. Nevertheless, we believe

[37] The Supplement (App. 823) at Article 42, § 1 contains similar language; then specifically requires the employer to give notice of recall, and provides recall procedures. See App. 823.

[38] The agreement also requires, App. 50, that "Drivers on layoff who have not exercised their seniority at some other terminal shall be recalled to work in accordance with the Road Agreement.

> that to allow LD's a three-year priority right on future openings would unduly impede the eradication of past discrimination.

The District Court had provided that identified victims of racial discrimination could move into "vacancies"—and had specified that "a vacancy shall not exist where there are laid-off employees on the seniority roster . . . However, if such lay-off continues for three consecutive years the position will be deemed as vacant . . . " P.A. 98, 517 F.2d at 322, note 44.

Thus, these admittedly non-discriminatory, conventional collectively-bargained protections for incumbents were honored by the District Court.

The Court of Appeals, however, having awarded discriminatees augmented seniority to provide "the incentive to transfer"[39] road to city, then effectively eliminated the contractual protection of laid-off drivers. The stated rationale was, P.A. 41, 517 F.2d 323:

> "We think that such modification will accommodate the discriminatees' right to advancement . . . ."[40]

[39] The Court of Appeals wrote, P.A. 31-32, 517 F.2d 318:

> The purpose of seniority carry-over under the rightful place doctrine is to give the discriminatee the incentive to transfer by removing the major disincentive to such transfer (loss of accumulated seniority). It also gives the discriminatee enough seniority in the new unit to permit effective competition for advancement and to provide the protection against the threat of layoff to which the discriminatee would be exposed because of the initial discrimination. *Bethlehem Steel, supra,* at 660; *Bing* (II), *supra,* at 450; *Local 189 Papermakers, supra,* at 988.

[40] The concept of "right to advancement" pertinent in line of progression seniority systems is wholly inapposite to the seniority systems applied here. In line of progression seniority cases—the seniorty "escalates" from department to department. Here, hiring is at top rates and movement either way is minimal. In most of the industry it is employer-barred. See our original brief, p. 32, note 58.

Actually it does much more. The incumbent city driver (already working at top wages and under excellent working conditions in the city) displaces the laid-off road employee. The road employee is thus effectively deprived of his seniority rights, i.e., in these circumstances, his job. And often the displaced road driver is a black. This hardly advances the high purpose of Title VII.

Likewise, the contracts which permit incumbents to exercise their seniority rights to bump in to other terminals are reformed "to provide that a laid-off L-D (line driver) may not move to another terminal where a vacancy exists . . ." P.A. 42, 517 F.2d at 323. The only stated rationale is that the cited provisions of the collective agreements "would tend to impede the advancement of blacks and SSA's into LD positions." 517 F.2d at 323.

Quite candidly, the Court of Appeals obliterates seniority protections in order to provide minorities "the incentive to transfer" and to remove whatever "would tend to impede the advancement of blacks . . ."

Court orders tailored for these purposes may, indeed, hasten the day when the sins of ten generations of our forefathers are expiated. But the Congress refused to go so far—the statute permits only "rightful place;" and quite specifically prohibits "preferential treatment to any . . . group because of the race color . . . or national origin of such . . . group on account of an imbalance which may exist . . ." Act. § 703(j). Or as the Chief Justice put it in *Griggs;* 401 U.S. at 431: "Discriminatory preference for *any* group, minority or majority, is precisely and only what Congress has proscribed."

Accordingly, the Court of Appeals should be reversed, and the District Court directed to provide a "make whole" seniority remedy limited to the individual victims of racial discrimination.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-636

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 75-672

T.I.M.E.-D.C., INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE AND BRIEF *AMICUS CURIAE* OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

N.A.A.C.P. Legal Defense and Educational Fund, Inc., hereby moves to for leave to file the attached brief as *amicus curiae.*

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., is a non-profit corporation incorporated under the laws of the State of New York. It was formed to assist Negroes to secure their constitutional rights by the prosecution of lawsuits. Its charter declares that its purposes include rendering legal services gratuitously to Negroes suffering injustice by reason of racial discrimination. For many years attorneys of the Legal Defense Fund have represented parties in employment discrimination litigation before this Court and the lower courts. The Legal Defense Fund believes that its experience in employment discrimination litigation may be of assistance to the Court. The proposed brief is submitted in support of respondent though advancing reasons somewhat different than those relied on by the courts below.

WHEREFORE, the N.A.A.C.P. Legal Defense and Educational Fund, Inc., respectfully prays that this motion be granted, and that the attached brief be filed.

Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

ARGUMENT

The Decision of the Court of Appeals Should Be Affirmed

The petitioners in these cases present an across the board challenge to the procedures which have evolved

over the last dozen years in the lower courts for trying and remedying cases involving systematic racial discrimination in large industrial plants or companies. Such cases frequently concern employment transactions over a period of many years, involving thousands of employees and tens of thousands of promotions, transfers, and other personnel transactions.[1] The employer often has scores of departments or offices and large numbers of supervisory and personnel officials. The promotional systems are commonly of great complexity, permeated with manipulable rules and discretion affording a wide variety of opportunities for discrimination. The standards applied by the Fifth Circuit in this case are the result of extensive judicial experience in a wide variety of cases under Title VII of the 1964 Civil Rights Act. Those standards are, to be sure, an equitable treatment of the parties in this action; more importantly, they are a carefully fashioned solution to the administrative problems posed by cases of such size and complexity. The approach urged by the petitioners would not only leave unremedied the palpable discrimination shown in this case, but would establish a manifestly unworkable procedure for handling government pattern and practice suits and private class actions.

1. The Finding of Liability

Petitioners complain that the courts below, in finding a pattern of practice of discrimination, relied heavily on "mere statistics." They object that such evidence is of little significance in establishing whether the company had a

[1] See, e.g., *United States* v. *United States Steel Corporation*, 520 F.2d 1043 (5th Cir. 1975) (3,000 black employees); *Pettway* v. *American Cast Iron Pipe Company*, 494 F.2d 211 (5th Cir. 1974) (2,500 employees); *United States* v. *Bethlehem Steel Corp.*, 446 F.2d 652 (2d Cir. 1971) (18,000 employees); *Capers* v. *Long Island R.R. Co.*, 5 EPD ¶ 8556 (E.D.N.Y. 1973) (7,000 employees).

policy of discriminating against non-whites in the hiring of line drivers. Amicus maintains that such statistical evidence is of great probative value, and was sufficient without more to establish a *prima facie* case in this action.

The question at issue is one of intent, whether the company and its officials, in their hiring and assignment practices prior to 1973, made such personnel decisions on the basis of race. Except in the unlikely event of a confession of guilt, it would ordinarily be difficult to establish whether an individual personnel action, considered in isolation, was the result of discriminatory intent. The company might assert that that action, though it had an adverse effect on the black employee involved, was in fact due to some other circumstance, such as employee qualification, job requirements, or inadvertence. The underlying intent could most readily be tested by inquiring whether the company had a pattern of similar action adverse to the black employees in a number of cases of varying circumstances. *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 804 (1973). As Professor Wigmore notes:

> To prove Intent, as a generic notion of criminal volition or willfulness, including the various non-innocent mental states accompanying criminal acts, there is employed . . . that logical process which eliminates the element of innocent intent by multiplying instances of the same result until it is perceived that this element cannot explain them all.[2]

"The prior doing of similar acts, whether clearly a part of a scheme or not, is useful as reducing the possibility that the act in question was done with innocent intent." *Keyes* v. *School District No. 1*, 413 U.S. 189, 207 (1973); *United States* v. *Ross*, 321 F.2d 61, 67 (2d Cir. 1963) (Friendly, J.);

[2] II Wigmore on Evidence §302, p. 196 (3rd Ed.).

United States v. *Schiller*, 187 F.2d 572, 575 (2d Cir. 1959) (Hand, J.)[3] Thus in an action alleging faculty segregation in a public school system, the plaintiff would more than meet his initial burden of proof by showing that all or most black teachers were assigned to predominantly black schools, and that all or most of the faculty at predominantly white schools were white.

In the instant case one could not necessarily infer discriminatory intent from the fact, in isolation, that a particular black was assigned to work as a city driver, or that a particular white was assigned to work as a line driver. The record, however, shows that, of the large number of black truck drivers employed in 1969, *all* were assigned to work as city drivers, and that of more than 1800 line drivers in that year, only 5 were Mexican American. 517 F.2d 299, 312. That pattern of assignment compels the conclusion, in the absence of detailed rebuttal evidence not present here, that these assignments were made on a racial basis. In the instant case the government showed far more than this, adducing the testimony of more than a score of witnesses as to specific instances of discrimination. This additional evidence increased the evidentiary showing required of the defendants to rebut the plaintiff's case.

For these reasons the evidence adduced by the United States in this case greatly exceeded that required to establish a *prima facie* case. Indeed, if the massive investigation and evidentiary showing made here were required in ordinary cases, the presentation of a class action would be far beyond the ability of most private litigants. The

[3] *See, e.g., United States* v. *Braverman*, 376 F.2d 249, 252 (2d Cir.), *cert. denied*, 389 U.S. 885 (1967) (Alleged innocent intent of defendant who had cashed six counterfeit money orders disproved by evidence he had cashed 36 others.)

preparation of this case consumed more than half the time of two experienced Department of Justice trial attorneys, and a research analyst, for a year and a half. They were aided by officials of several other federal agencies: the United States Postal Service supplied documentary evidence on the defendants' employment patterns, the Equal Employment Opportunity Commission provided a variety of individual complaints, and the Federal Bureau of Investigation extracted and copied thousands of documents from the defendants' files. A team of government lawyers deposed over 60 witnesses in 10 cities, interviewed another 150 witnesses, and xeroxed over 1,000 additional documents. At trial the government called 14 witnesses from throughout the country, introduced the depositions of scores of others, and offered over 200 exhibits. 517 F.2d at 306, 314. Such an investigation and presentation substantially exceeded the minimum amount necessary to establish a *prima facie* case, and was manifestly far beyond the resources of most private plaintiffs who have been the victims of discrimination and whom Congress intended to play a major role in the enforcement of Title VII.

Petitioners further object, however, that proof of a general policy of discrimination is insufficient to warrant relief for any individual non-white employee, and that discrimination against a particular employee cannot be inferred from that policy. In *Keyes* v. *School District No. 1*, 413 U.S. 189 (1973), this Court held that once a showing has been made that a defendant's conduct was significantly tainted by discriminatory purpose, the burden shifts to the defendant to prove that all such conduct was not so tainted, 413 U.S. at 209-210.[4] "We have never suggested that plain-

[4] In the context of intentional segregation of public schools, the Court explained, "[A]t that point where an intentionally segregative policy is practiced in a meaningful or significant segment of

tiffs in school desegregation cases must bear the burden of proving the elements of *de jure* segregation as to each and every student within the school system." 413 U.S. at 200. Similarly the existence of a *prima facie* case of discrimination in a Title VII action is sufficient, unless successfully rebutted in general or as to particular individuals, to require relief for all the affected class of minority employees. *Franks* v. *Bowman Transportation Co.*, 47 L.Ed.2d 444, 466, n. 32 (1976).

2. The Injunctive Remedy

The evidence in this case clearly showed, and the district court correctly found, that the defendants had engaged in a pattern and practice of discrimination by denying to blacks and Mexican Americans the opportunity to be hired as line drivers. To remedy this systematic discrimination the court of appeals directed a correspondingly systematic remedy, i.e. that blacks and Mexican Americans, who were previously ineligible because of their race for line driver jobs, be given an opportunity to transfer those jobs with seniority status sufficient to make such a transfer feasible. Minority drivers seeking to transfer would still be required to meet such non-discriminatory qualifications as were actually applied in the past to white drivers.

The remedy sought by the government and awarded by the court of appeals was less than complete relief under Title VII. Minority drivers will not be afforded an opportunity *now* to transfer to line driver jobs; they must wait until, through retirement or increased demand, there are vacancies on the line driver rosters. It may be years until sufficient vacancies occur for all minority drivers who seek to transfer, and some of those drivers may well reach retirement age before their opportunity to transfer arises. Pending such vacancies, blacks and Mexican Americans assigned to other jobs because of their race will continue to be consigned to those lower paying positions,[4] while whites hired as line drivers because of their race, and whites hired after the finding of liability but before implementation of the Fifth Circuit order, continue to enjoy the high salaried line driver positions which they would not have held in the absence of discrimination. Even when a minority driver succeeds in transferring, he will still not be in the economic position he would have enjoyed in the absence of discrimination, because ahead of him on the seniority roles will be whites who, but for the unlawful discrimination, would not have been hired. *See Franks* v. *Bowman Transportation Co.*, 47 L.Ed.2d 444, 469 (1976). In sum, the remedy ordered by the Fifth Circuit will move with the uncertain tempo of all deliberate speed, and will, even in the long run, fall short of making minority employees whole.

The defendants nonetheless characterize this relief as drastic in nature and unwarranted by the record in this, or perhaps any, case. Their primary concern is that, if now afforded the opportunity to become line drivers which they were previously denied, more, or different, minority employees will choose to work as line drivers than would have done so had that opportunity not been denied to them,

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a school system, as in this case, the school authorities cannot be heard to argue that plaintiffs have proved only 'isolated and individual' unlawfully segregative actions. In that circumstance, it is both fair and reasonable to require that the school authorities bear the burden of showing that their actions as to other segregated schools within the system were not also motivated by segregative intent." 413 U.S. at 209.

[4] During the period until they are able to transfer to line driver jobs the minority employees will be entitled to front pay. *Franks* v. *Bowman Transportation Co.*, 47 L.Ed.2d 444, 469, n. 38 (1976).

on account of their race, when they were initially hired. The defendants offered no evidence to suggest that this is in fact likely to occur. The burden of demonstrating that a minority employee would not have wanted a more lucrative road driving job is very substantial, both because any answer to such a hypothetical question concerning events years in the past is inherently speculative and because the defendants would not have maintained that discriminatory policy if they had thought the minority employee did not want the position anyway.

The partial, slow, but systematic remedy ordered in this case, and known as the "rightful place" relief, represents a workable approach fashioned by the lower courts, on the basis of extensive experience in a variety of cases, to remedying discrimination against large numbers of individuals in a complex industrial setting. Such rightful place relief entails the right to transfer into the next available vacancy combined with sufficient seniority relief to make it feasible in fact for minority employees to transfer to previously all white jobs and thus disestablish the dual system created by past discrimination. *Green* v. *New Kent County*, 391 U.S. 430 (1968). Although this remedy is invariably incomplete, and tends to leave minority employees in positions worse, and white employees in positions better, than would have been the case in the absence of discrimination, it avoids the need for burdensome, if not unfeasible, speculation as to what position each minority employee would have held but for the discrimination.[6] Either party, we believe, should have the right to seek such a hypothetical historical analysis. If, however, such an analysis proves

[6] Because minority employees are entitled to front pay until they transfer into their rightful place, the burden of compliance with Title VII under this approach falls more heavily on company or union than on white employees. *Franks* v. *Bowman Transportation Co.*, 47 L.Ed.2d 444, 469, n. 38, 471 (1976).

possible and is undertaken, the resulting certainty as to precisely where each minority employee belongs will remove any basis for the incompleteness of "rightful place" relief; in such a case each minority employee must be placed at once in the position he would have held in the absence of discrimination. We note that, whatever the injunctive remedy, an innocent white whose present or future position is adversely affected by tardy compliance with Title VII may, in an appropriate case, seek monetary relief against the employer or union responsible for the discrimination. *Franks* v. *Bowman Transportation Co.*, 47 L.Ed.2d 444, 471 (1976) (Burger, C.J., concurring and dissenting).

3. Union Liability

The International in this case has urged that it should not be held liable for the discriminatory effect of the seniority system because the contract between the Teamsters and the employers was ratified and signed by the local unions.[7] The Teamster local in *Teamsters Local Union 657* v. *Rodriguez*, No. 75-651, takes the opposite position, urging that it is International which is liable, since the International had actually negotiated the contracts involved, and the Local had agreed to be bound by the results of those negotiations if approved by a majority of the other locals.[8] The Southern Conference of the Teamsters urges that the company alone is liable, because the discriminatory seniority system could not deter transfers between terminals, or from city to road jobs, since such

[7] In its Petition the International suggested the liability might lie with the Conference. Petition, No. 75-636, pp. 28-30. The International's brief is silent on this issue.

[8] Brief in No. 75-651, pp. 14-20.

transfers were forbidden by company rule.[9] These conflicting contentions regarding union liability are all mistaken.

Each of these arguments is founded on the erroneous assumption that Title VII permits a union to knowingly acquiesce in employer discrimination by failing to protest such violations of the rights of its minority members, and that a union only becomes liable if it forces that discriminatory policy on the employer. Three circuits have recognized the existence of "an affirmative union obligation under Title VII" in its vital role as bargaining agent, to negotiate actively for nondiscriminatory treatment of its black members. *Macklin* v. *Spector Freight Systems*, 478 F.2d 979, 989 (D.C. Cir. 1973).[10] "Where a union has not done so and where there is such solid evidence of employer discrimination as is alleged here, it would undermine Title VII's attempt to impose responsibility on both unions and employers to hold that union passivity at the negotiating table in such circumstances cannot constitute a violation of the Act." *Id.* That affirmative duty includes a responsibility to scrutinize the effect of the union's collective bargaining agreements[11] and the conduct of an International to which it belongs or locals which it has created,[12] and to seek "corrective steps to prevent discriminatory practices, to remove impediments that perpetuate past discrimina-

[9] Brief in No. 75-715, pp. 18-22.

[10] *Kaplan* v. *International Alliance of Theatrical, etc.*, 525 F.2d 1354, 1360 (9th Cir. 1975); *Johnson* v. *Goodyear Tire and Rubber Co.*, 491 F.2d 1364 (5th Cir. 1974); *Carey* v. *Greyhound Bus Co., Inc.*, 500 F.2d 1372, 1379 (5th Cir. 1974).

[11] *Sagers* v. *Yellow Freight System, Inc.*, 529 F.2d 721, 737, n. 32 (5th Cir. 1976); *Wells* v. *Frontier Airlines*, 381 F. Supp. 818, 821 (N.D. Tex. 1974).

[12] *Kaplan* v. *International Alliance of Theatrical, etc.*, 525 F.2d 1354, 1360 (9th Cir. 1975).

tion, and to place discriminatees in their 'rightful place' ".[13] These obligations to protect the legal rights of minority members cannot be ignored because of the whims of the majority.[14]

This affirmative duty comports with the practical and legal realities with which Title VII is concerned. Where, as here, a union is certified by the National Labor Relations Board as an exclusive bargaining representative, minority members of the union lose their right to engage on their own in concerted activity to compel the employer to bargain with them about unlawful discrimination. *Emporium Capwell Co.* v. *Community Org.*, 420 U.S. 50 (1975). Minority members cannot resort to such activity even if the union has failed to take steps to remedy "the discrimination to the fullest extent possible, by the most expedient and efficacious means." *Id.*, p. 60. This loss of minority rights must entail a corresponding duty on the part of the union to use in the vigorous protection of minority rights the power to bargain and engage in concerted activity unavailable to those minority members themselves. The union cannot give preference to the desires and interests of white members in either its decision as to which employer practices to seek to modify or in its decision as to which employer practices to accept. To acquiesce in employer discrimination because it benefits white members, as to seek such discrimination for that reason, is to violate the union's duty "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and

[13] *Myers* v. *Gilman Paper Co.*, 392 F. Supp. 413, 420 (S.D. Ga. 1975).

[14] *United States* v. *Bethlehem Steel Corp.*, 312 F. Supp. 977, 989 (N.D.N.Y. 1970), rev'd in part on other grounds, 466 F.2d 652 (2d Cir. 1971).

honesty, and to avoid arbitrary conduct." *Vaca* v. *Sipes*, 386 U.S. 171, 177 (1967).

When the terms and conditions of employment discriminate against blacks, the primary beneficiary is not the employer but the white employees. Discrimination in promotions against black union members is *ipso facto* discrimination in favor of white union members. It would blink reality to suggest that an employer would elect to continue such policies in the face of objections from the union representing the whites to whom it was giving the unlawful preference. When a white dominated union acquiesces in such violations of Title VII to the benefit of its white majority, it cannot thereafter avoid liability by asserting it is a stranger to the misconduct involved.

It is thus clear that under Title VII, as under the National Labor Relations Act, no distinction can be made between a union which urges the employer to discriminate and a union that merely acquiesces in such discrimination. The controversy between the Local, Conference and International as to who is "responsible" for the seniority system and its discriminatory effect is, at the liability stage, irrelevant, for each of the union entities at the least acquiesced in the use of that system. While differing roles may bear on the allocation of back pay liability among the unions, all of them violated the law by failing to make any effort to prevent the adoption or continuation of that discriminatory system[15] and each is jointly and severally liable for the resulting economic injury.

The unions suggest, however, that they are immune from liability because they delegated away any duties under Title VII. The International claims it delegated its

[15] Under the N.L.R.A. the duty of care may apply only to the specific union entity which is the designated exclusive bargaining agent; no such distinction is made by Title VII.

responsibilities to the locals pursuant to the union constitution which provides that the locals have the ultimate power of ratification. The Local claims it delegated its responsibility to the International by a power of attorney to bargain with the employers. The union duty of care under Title VII, however, cannot be delegated away. It is, in this regard, similar to the non-delegable duty of an employer to protect his employee from injury. The contrary rule would invite frustration of Title VII by a delegation of union responsibility to a union entity which lacked the economic power to effect employer practices or which, against a claim for back pay, was judgment proof.

In an action under Title VII an aggrieved employee may join as a defendant any union entity which affirmatively engaged in discrimination or which failed to meet its obligation to the employee, as a member, applicant, or otherwise, to protect him or her from, and to remedy, unlawful discrimination. If the union which is so joined maintains that another union or unions also failed, perhaps to a greater degree, to satisfy that obligation, its recourse is to join such other union or unions as a third party defendant under Rule 14, Federal Rules of Civil Procedure.

CONCLUSION

For the foregoing reasons the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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